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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Decided on: 05.12.2019*

\+ **MAC.APP. 155/2018**

ANJU MAHAJAN ..... Appellant

Through: Mr. Manish Maini, Advocate.

versus

NASIR ALI & ORS (NEW INDIA ASSURANCE COMPANY LTD) ..... Respondents

Through: Mr. D.D. Singh, Advocate for insurance company.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This appeal impugns the award of compensation dated 16.07.2016 passed by the learned MACT in Suit No. 390/2011, inasmuch as: i) it has erred in computing the compensation towards 'loss of earnings' by excluding ITRs filed after the accident, and ii) compensation towards 'loss of future prospects' has not been granted. This issue has been dealt with in the impugned order as under:-

> " *Admittedly, no documents have been filed by petitioner to corroborate the payment of salary by way of cheque, nor any appointment letter qua her appointment was produced. Also, the other income generated by the petitioner by computer job work has not been corroborated by filing of receipts/vouchers. The Income Tax Returns for the post accident period have not been filed on record. Neither the husband of the petitioner entered the*

witness box to show the documentary proof of the actual payment of salary to the petitioner by way of cheque or otherwise. It may also be noticed that the last Return for the Assessment Year 2007-08 was filed only on 07.12.2007 though the accident had taken place on 20.06.2007 and only in aforesaid Return the salary has suddenly increased from Rs.72,180/- to Rs.1,05,600/- while for the remaining years it has remained almost static without any increase. In the aforesaid background since the tax paid is NIL, the possibility cannot be ruled out that the inflated Income Tax Return for Assessment Year 2007-08 had been filed to book the expenses in the business run by the husband of the petitioner and cannot be considered. Considering the facts and circumstances, I am inclined to take the income of the petitioner for the purpose of assessment as average of net income for the last three Assessment Years (i.e. 2004-05, 2005-06 & 2006-07) excluding the Return for the last Assessment Year i.e. 2007-08,which comes to Rs.89,100/- per annum."

2. The aforesaid ground is untenable and is accordingly rejected.

3. Insofar as the appellant's earning capacity has been established, she would be entitled to compensation for 'loss of future prospects' also. Accordingly, she being 32 years of age at the time of the accident and in private employment, she is granted an addition of 40% on the loss of dependency towards 'loss of future prospects'.

4. Relying upon the decisions in *DTC vs. Lalit* AIR 1981 Delhi 558 and *United India Insurance Co. Ltd. vs. Rama Swamy and Others* 2012 (2) TAC 34 (Del), the learned Tribunal held that where a victim of a motor accident required an attendant to be hired and/or a family member render gratuitous services, financial assessment of such expense shall be carried out and prior compensation in this regard would need to be granted. In the present case, the appellant has suffered 90% permanent disability with respect to her

entire body, her functional disability is assessed as 100% and the expenses towards provision of an attendant for her life time has been assessed on the basis of minimum wages applicable to an unskilled worker at the time of the accident i.e. Rs. 3,470/- per month totalling to Rs. 6,66,240/- [(Rs. 3,470/- (minimum wages) x 12 (months) x 16 (multiplier)].

5. The Court is of the view that the aforesaid compensation of Rs. 6,66,240/- granted apropos 'future attendant charges' cannot be said to be 'just compensation', because the minimum wages of an unskilled worker would change over the years. Indeed the motor accident occurred in the year 2007 when the minimum wages for an unskilled worker was Rs. 3,470/- whereas it was Rs. 9,568/-, later revised to Rs. 9,724/- in 2016, when the award was passed, i.e. an aggregate of Rs. 9,646/-. Therefore, the compensation @Rs. 3,470/- i.e. Rs. 41,640/- for the year 2007 could not meet the expense of an unskilled workman in the year 2016-which would be about thrice over (Rs. 9,646/-x12=Rs. 1,15,752/-) annually. For award of compensation to be just, it ought to be realistic and not illusory. Therefore, the 'attendant charges' for the preceding twelve years shall be computed on the basis of revised minimum wages applicable to an unskilled worker for the respective year. The same shall be payable as under:-

Year	Minimum Wages	Amount
2007	[Rs. 3,470/- + Rs. 3,516/- ÷ 2 x 12]	Rs. 41,916/-
2008	[Rs. 3,633/- + Rs. 3,683/- ÷ 2 x 12]	Rs.43,896/-
2009	[Rs. 3,934/- + Rs. 3,953/- ÷ 2 x 12]	Rs.47,322/-
2010	[Rs. 5,278/-x12]	Rs. 63,336/-

2011	[Rs. 6,084/- + Rs. 6,422/- + Rs. 6,656/- ÷ 3 x 12]	Rs. 76,648/-
2012	[Rs. 7,020/- + Rs. 7,254/- ÷ 2 x 12]	Rs. 85,644/-
2013	[Rs. 7,722/- + Rs. 8,086/- ÷ 2 x 12]	Rs. 94,848/-
2014	[Rs. 8,554/- + Rs. 8,632/- ÷ 2 x 12]	Rs. 1,03,116/-
2015	[Rs. 9,048/- + Rs. 9,178/- ÷ 2 x 12]	Rs. 1,09,356/-
2016	[Rs. 9,568/- + Rs. 9,724/-÷ 2 x 12]	Rs. 1,15,752/-
2017	[Rs. 13,584/- + Rs. 13,584/-÷ 2 x 12]	Rs. 1,63,008/-
2018	[Rs. 13,896/- + Rs. 14,000/-÷ 2 x 12]	Rs. 1,67,376/-
	TOTAL	Rs. 11,12,218/-

6. The Court would note that since the appellant is now 45 years of age, therefore, multiplier of 14 ought to be applied while computing 'future attendant charges'. Accordingly, the amount payable towards the same shall be as under:

Rs. 14,468/-(minimum wages w.e.f. 01.10.2019) x 12 (months) x 14 (multiplier) = Rs. 24,30,624/-

7. Should the minimum wages for unskilled workman be revised, the appellant shall be entitled to seek revised realistic compensation, after exhaustion of the current award for future attendant charges rates as may be notified.

8. Apropos 'future attendant charges', no arrears shall be paid to the appellant. The arrears shall be payable on the awarded amount alongwith interest @9% per annum.

9. The learned counsel for the appellant submits that additional evidence was allowed to be led for a wheel chair to enable the injured to acquire skills, so as to rehabilitate herself economically, to the maximum extent possible. In this regard, statement of Dr. Satish Kumar (MPT), HOD MSS Hospital, Physiotherapy Department, Pitampura, Delhi reads *inter alia* as under:-

> *"...The progress of the patient depends upon response to the treatment and it take between 4-6 months to learn these exercise to practice at home. The patient will not be able to walk without support even after rehabilitation programme. The benefit of this treatment programme is to avoid further deterioration of muscles strength and to keep the same to maintain them. He goes on to say that the patient can not recover and walk independently but with the training her muscle strength may improve. At present she is wheel chair bound. She can sit with support. Both her upper limbs are normal and functional and she can do desk work. The muscles are empowered with external stimulator. The purpose of un-weighing system as referred in Ex. AW1/1 at point 3, to make her mobile. The meaning of walker added ambulation as referred in Ex. AW1/1 at point 4 is to help the patient to walk with a walker. The purpose of the exercise at point 6 of Ex. AW1/1 is to provide the patient the muscle strength. The purpose of these exercise to help her walk but she will not be able to walk independently. With the exercise as prescribed in Ex. AW1/1 she can walk with the help of walker and calipars. The duration of this exercise is 3-4 hours daily except Sundays."*

10. The learned counsel for the respondent submits that the expenses towards treatment would be Rs. 15,000/- per month, for 6 months i.e. a total of Rs. 90,000/-. That being the unrebutted position, let an amount of Rs. 90,000/- be paid to the claimant for rehabilitation.

11. The appellant has sought the provision of a wheel-chair, which in the circumstance discussed hereinabove is justified, as she is unable to move about on her own and she desires to make her life economically independent, to the maximum possible extent, for which she needs to be made optimally mobile. In any case, why should a person who has been rendered 100% functionally disabled and 90% physically disabled be dependent entirely upon somebody else to shift or even move from the bed to the window to look at the world outside or walk in her own garden. Just compensation envisages a comprehensive assessment of the disadvantage to the injured who has been handicapped on account of the motor accident. In the circumstances, she shall be provided with a wheel-chair of her satisfaction, preferably in terms of the clause at page 90 of the paper book, for Rs. 2,36,250/-. The amount shall be paid to the supplier directly by the insurance company within two weeks from the date of receipt of copy of this order. Since the appellant has been permanently disabled, the provision of such wheel chair shall have a life time warranty and/or its replacement or upgradation, should the need for the same arise. The insurer shall provide functional telephone numbers of three responsible officers alongwith their e-mail address, on which the appellant could intimate about the non-functioning or otherwise about any defects in the wheel-chair. Additionally, the insurer shall itself ascertain the condition and usability of the said wheel chair by the 5th day of January and August and otherwise rectify any malfunctioning of it within two days of receipt of such intimation. Should there be any default in this regard, it will be open to the claimant to move to Court.

12. The additional amount, alongwith interest @9% from the date of filing of the claim petition till its realization, shall be deposited before the learned Tribunal, within three weeks from the date of receipt of copy of this order, to be released to the beneficiary of the Award, in terms of the scheme of disbursement specified therein.

13. The monies shall be released directly into the bank account of the appellant, which the learned Tribunal shall ensure is maintained in a bank near her place of residence. ATM card or cheque book shall not be issued. Withdrawal shall be made on the basis of withdrawal slip to be issued in her name directly by the Manager of the bank concerned. Her going to the bank in the wheel chair would test the functioning of the wheel chair.

14. The learned counsel for the appellant submits that the deduction of Rs. 5,40,000/- is unwarranted on the alleged ground of the insurance company that PAN Card of the appellant was not available. The learned counsel for the appellant submits that the appellant is the income tax assessee and had filed ITRs for past many years which are to be taken into consideration in computation of compensation. He submits that the PAN number is visible from the ITRs itself. Additionally, the copy of the PAN card is annexed as Ex. PW-1/4. In the aforesaid circumstances, the said deduction is not warranted.

15. In view of the above the deduction of Rs. 5,40,000/- shall be kept in abeyance for the insurer to reconsider the same, in view of the aforesaid PAN number. Should the insurer require any additional documents in this regard, the appellant undertakes to provide the same within two weeks of such request being made. It will be open to the insurer to take remedial

measures and issue such certificate and make such refund as may be appropriate.

16. The appeal stands disposed-off in the above terms.

NAJMI WAZIRI, J

DECEMBER 05, 2019

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