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

% *Decided on: 13.09.2019*

\+ MAC.APP. 423/2017 & CM APPL. 16382/2017

ORIENTAL INSURANCE COMPANY LTD ..... Appellant

Through: Mr. Ravi Sabharwal, Advocate.

versus

MANOJ KUMAR & ORS ..... Respondents

Through: Mr. V.K. Vashisth, Advocate for R-1.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. Issue notice.

2. The learned counsel named above accepts notice on behalf of the insurance company. At joint request, the appeal is taken up for disposal.

3. This appeal impugns the award of compensation dated 21.02.2017 passed by the learned MACT in MACT No. 14461/15, on the ground that instead of the standard simple interest @ 9% per annum, which has normally been awarded by the MACTs for the last half a decade, 12% per annum interest has been awarded on the compensation amount. The learned Counsel for the respondent/claimant promptly agrees that the same be brought in accordance with the prevalent rate i.e. 9%. It is so ordered. Accordingly, the impugned order is modified to this extent and the rate of interest shall be awarded @ 9% per annum instead of 12%.

4. No other ground is pressed by the appellant.

5. Respondent no. 1/claimant has filed Cross Objections to the appeal. Let the cross-objections be numbered and registered as a separate MAC. APP. Issue Notice. The learned counsel named above accepts notice on behalf of the insurance company. At joint request the Cross Objections/ (MAC Appeal) is taken up for disposal.

6. It is the claimant's case that he has suffered 82% permanent physical disability apropos his whole body and he should be awarded just compensation, especially towards 'loss of future prospects'. The learned counsel for the claimant, contends that the nature of the injury too has to be kept in mind for awarding compensation for loss of amenities, enjoyment of life, etc. The claimant was 32 years of age, at the time of the motor vehicular accident. He was married, but the nature of the injury caused by the accident, has deprived him of the enjoyment of comprehensive marital life. PW-3, Dr. Arun Gupta of GTB Hospital had described the nature of the injuries as under:

> *"E. Because the Ld. Tribunal has also not awarded any amount towards loss of future medical expenses. It is clarified here that the claimant examined Dr. Arun Gupta Director of surgery GTB Hospital Delhi as PW-3 he stated that "patient suffered serious head injury and distil (sic) part (i.e. front part) of the penis was remove by surgical operation and subsequent developed infection and gangrene" thus after taking consideration of grievous injuries and long treatment the claimant is entitled an amount of Rs. 50,000/- towards future medical treatment."*

7. In effect, not only would the claimant be deprived of a marital life but his injury in the groin area would be extended injustice to his spouse. The injury would also be a restraint upon procreation. In the circumstances, the Court is of the view that the nature of the injury calls for an enhancement of the compensation. Reliance is placed on the judgment of the Supreme Court in ***Parminder Singh vs. New India Assurance Co. Ltd. & Ors.***, 2019 SCC OnLine SC 802 which considered the case of a 22 year old injured and had held as under:

> *" Given the debilitated state of the Appellant, no amount of money can compensate him. He has been in this condition since the age of 22 years when the accident took place, and will remain like this throughout his life. The Appellant has also been deprived of having a normal married life with a family and would require medical assistance from time to time. Being completely dependant, he would require the help of an attendant throughout his life.*
>
> *In view of these uncontroverted facts, we deem it fit and appropriate to award a lump sum amount of Rs. 10,00,000/- to the Appellant towards medical expenses and attendant charges…"*

8. In the circumstances, the loss of earnings would be deemed to be 100%, especially because the insured has lost complete vision in one eye. The nature of the injury has been discussed in the impugned order as under:

> *"15. PW-1/petitioner has stated in his affidavit Ex. PW1/A that he was doing a private job in Jeans Factory and earned about Rs. 10,000/- per month. However, no documentary proof regarding the income of the injured has been placed on record in respect of his earnings.*

Petitioner has sustained grievous injuries in view of medical records resulting into 82 %of the disability relating to whole body. The petitioner has deposed that he remained admit in hospital from 08.07.11 to 21.07.11 and suffered grievous injuries; he was remained admit in hospital from 06.08.11 to 25.08.11. Due to the disability received, certainly his carrier prospects and life has been affected including his earning capacity. As stated, he was doing a private job in Jeans Factory anti earned about Rs. 10,000/- per month and in the opinion, it is difficult for him to continue his profession keeping in view of nature of work and injury/ age. I have gone through the testimony of PW-2, PW-3 and PW-4 i.e. doctors who examined the patient and issued the disability certificate. In view of testimony of PW-4 and vide disability certificate Ex. PW 1/ 3, the patient is suffering 82 % permanent disability in relation to whole body; he suffering from post traumatic quadriparesis (weakness of all four limbs with visual disability). As deposed, the patent suffered grievous injuries as head injury with fracture both bones right lower limb with fracture right clavicle with distal penile gengrene. The injured has also complete loss of vision of right eye. The sexual life of injured has also been effected due to injury. In the facts and circumstances of the case and nature of disability of the petitioner, I. assessed that due to disabilities sustained, his capacity has been reduced restricting him from carrying his work. Considering the evidence on record and facts of the case, the functional disability of the petitioner has been assessed as 82 % in relation to his, whole body, in view of judgment of <u>Raj Kumar V/s Ajay Kumar & Anr. (2011) 1 SCC 343.</u>"

9. The learned Tribunal has awarded the following amounts:

1	*Future Loss of Income*	*Rs.10,11,072/-*
2	*Towards Pain Shock & Suffering*	*Rs. 1,00,000/-*
3	*Towards Loss of Amenities & Enjoyment of life*	*Rs. 50,000/-*
4	*Towards Servant/Attendant Charges*	*Rs. 25,000/-*
5	*Towards Conveyance & Special diet*	*Rs. 40,000/-*
6	*Towards Medical Bills*	*Rs. 6,781/-*
7	*Towards Loss of Wages*	*Rs. 38,532/-*
	Total	***Rs. 12,71,385/-***

10. While the injured may have suffered 82% disability apropos the whole body, he has functionally become virtually unemployable in the same vocation as he was earlier employed in. He was doing a private job in a jeans factory. The nature of the injury is such that nobody would possibly provide him employment in a factory and he would otherwise not be able to carry on the work, he was earlier employed for.

11. In ***Raj Kumar vs. Ajay Kumar & Anr.***, (2011) 1 SCC 343, the Supreme Court has held *inter alia*:

> ***"5.*** *The provision of the Motor Vehicles Act, 1988 ("the Act", for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of*

disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. [See C.K. Subramania Iyer v. T. Kunhikuttan Nair [(1969) 3 SCC 64 : AIR 1970 SC 376] , R.D. Hattangadi v. Pest Control (India) (P) Ltd. [(1995) 1 SCC 551 : 1995 SCC (Cri) 250] and Baker v. Willoughby [1970 AC 467 : (1970) 2 WLR 50 : (1969) 3 All ER 1528 (HL)] .]

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***……* 13.** *Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.*

14. *For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred per cent, if he is neither able to drive or do carpentry. On the other hand, if the* *claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of "loss of future earnings", if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not be found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity."*

12. Therefore, since the normal life of the injured has been severely affected, the consolidated non-pecuniary compensation on account of "pain, shock and suffering", "physical discomfort", "disappointment and stress for the whole of his remaining life", for "loss of amenities and enjoyment of life", etc., the awarded amount is enhanced from Rs. 6,00,000/- to Rs. 7,50,000/-. The claimant shall also be paid the reimbursement of medical bills of Rs. 6,781/-, as well as Rs. 20,000/- for special diet and Rs. 20,000/- for conveyance charges. Since the claimant will require some physical assistance throughout his life, lump sum attendant charges of Rs. 2,50,000/- has been awarded to him.

13. On the 100% functional disability there shall be an addition of 50% towards 'loss of future prospects' in terms of ***Parminder (supra)***.

14. In view of the above, the total amount payable shall be as under:

S.No.	Particulars	Amount
1.	Loss of Dependency Rs.77,064/- (minimum wage) x 16 (multiplier) 150/100 (loss of future prospects)	Rs. 18,49,536/-
2.	Compensation towards pain, shock and suffering, physical discomfort, loss of amenities and enjoyment of life etc.	Rs. 7,50,000/-
3.	Attendant Charges	Rs. 2,50,000/-
4.	Conveyance Charges	Rs. 20,000/-
5.	Special Diet	Rs. 20,000/-
6.	Medical Bills	Rs. 6,781/-
	Total	**Rs. 28,96,317/-**

15. The total payable amount would be Rs. 28,96,317/- alongwith interest accrued thereon as mentioned in the award. Let the enhanced amount of Rs. 16,24,932/-, alongwith interest @ 9% per annum thereon, from the date of filing of the claim petition till its realization, be deposited before the learned Tribunal for release of the same to the beneficiary of the award in terms of the scheme of disbursement specified therein.

16. The appeal is disposed-off in terms of the above.

17. A copy of this order be given *dasti* to learned counsel for both the parties under the signature of the Court Master.

NAJMI WAZIRI, J

SEPTEMBER 13, 2019/AB