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

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Decided on: 05.09.2019

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MAC.APP. 643/2017

TATA AIG GENERAL INSURANCE CO LTD Appellant

Through: Mr. Rudra Kahlon, Advocate.

versus

KAILASH MUDGAL & ORS

..... Respondents

Through: Mr. M.K. Sinha and Ms. Deepshikha,
Advocates.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

MAC.APP. 643/2017 & CM APPL. 25894/2017

1. The award of compensation dated 19.04.2017 passed by the learned MACT in MACP No. 43/16 is impugned on the ground that, instead of compensation @ 40% towards 'loss of future prospects' in terms of the dicta of the Supreme Court in *National Insurance Co. Ltd. v. Pranay Sethi & Ors.* (2017) 16 SCC 680, 50% has been awarded to the claimant, who was merely 37 years of age. The Court is of the view that the position of law stands settled in this regard, by the cited judgment. Since the deceased was under 40 years of age and not in permanent employment, he would be entitled to only 40% towards "loss of future prospects". Accordingly, the

impugned order is modified: the loss of compensation shall be calculated at 40% and not at 50%.

2. The other argument is that there was no proof of expenditure on medical expenses and physiotherapy treatment, therefore, Rs.72,007/- ought not to have been granted. The impugned order has reasoned as under:-

“3. R-1 and R-2 filed joint written statement/reply thereby stating therein that the petitioner suffered injuries due to his own fault and respondents took the petitioner to Vimhans Hospital and entire expenses were borne by them. It is further stated that respondents also paid a sum of Rs.35,000/- towards physiotherapy treatment and Rs.33,000/- for family expense. The averments made on merits are denied. It is further stated that since the petitioner was well aware that the accident had taken place due to his own negligence, he did not get the FIR registered and compromised the matter.”

3. The reason for awarding the said amount is that the insurer was not able to disprove the claim of Rs. 35,000/- towards physiotherapy treatment and Rs. 33,000/- for family expenses, spent by the claimant. The reasoning is ex-facie erroneous because the expenditure was itself not proven by the claimant. He could have brought and/or adduced bills and proof of the payment of same through banking transaction or by summoning records of the hospital to verify the receipts of payments, if any. The insurer cannot be expected to disprove something which is yet to be proven. Therefore, Rs. 72,007/- towards medical expenses and physiotherapy treatment shall be deducted from the impugned award.

4. The learned counsel for the appellant contends that compensation towards ‘attendant charges’ @ Rs. 14,55,480/- is on the higher side because

the injured is otherwise able to stand on his own legs, accordingly, and he would be able to discharge his duties by himself. The said argument is untenable because the impugned order has reasoned that the claimant has suffered a permanent physical impairment apropos both his upper and lower limbs as well as to his urinary bladder. That being the extent of his injury, he would obviously require an attendant at all times for 'his daily routine'. Reliance was placed on the dicta of this Court in ***United India Insurance Company Ltd. vs. Rama Swamy and Ors.*** in MAC APP. 328/2011 decided on 13.01.2012. In the circumstances, the award of compensation on this issue calls for no interference in this regard, in this regard.

5. The Court would note that the compensation towards 'mental and physical shock', 'pain and suffering' 'loss of amenities of life' and 'disfigurement' @Rs.50,000/-, Rs. 2 lac, Rs. 50,000/- and Rs. 50,000/-, respectively. Clearly the second quantum of Rs. 50,000/- towards 'loss of earning, inconvenience, hardships, disappointment, frustration, mental stress, dejection and unhappiness in future life etc.' is not made out. Accordingly, the award of Rs. 50,000/- towards last non-pecuniary head shall be deducted.

6. Therefore, in the circumstances, the excess amount, as may be, shall be refunded to the appellant, alongwith statutory deposit of Rs. 25,000/- as well as the interest accrued thereon.

7. The amount payable towards 'loss of dependency' shall be Rs. 10,000/- (monthly income) x12(months)x15(multiplier)x 140/100(loss of future prospects)=Rs. 25,20,000/-.

8. In terms of the awarded amount i.e. Rs. 27 lac, as 'loss of income', the excess amount of Rs. 1,80,000/- (Rs. 27,00,000/- less Rs. 25,20,000/-) shall be deducted alongwith Rs. 72,007/- and Rs.50,000/-.=Rs. 3,02,007/-, alongwith interest accrued thereon plus Rs. 25,000/- deposited by the appellant for statutory deposit. At this stage, the claimant submits that an appeal for enhancement of the award has been filed.

9. The remaining amount be released to the beneficiaries of the Award, in terms of the scheme of disbursement specified therein.

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

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

NAJMI WAZIRI, J

SEPTEMBER 05, 2019

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