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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 03.09.2019

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MAC.APP. 1051/2018

NATIONAL INSURANCE CO LTD

..... Appellant

Through: Mr. Manoj Ranjan Sinha, Advocate.

versus

ZUBEEN GOSWAMI & ORS

..... Respondents

Through: Mr. S.N. Parashar, Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

MAC.APP. 1051/2018 & CM APPL. 49475/2018

1. This appeal impugns the award of compensation dated 27.08.2018 passed by the learned MACT in MACP No. 5133/2016 on the ground that it has not apportioned any amount towards contributory negligence of and on the injured/victim. Instead it has directed the appellant/insurer to indemnify the claimants for the awarded compensation amount. The scooter was being driven by an underage claimant, who was merely 14 years and 10 months of age on the date of motor vehicular accident. The learned counsel for the appellant refers to the Site Plan prepared by the police (page 37 of the paper book). It shows that the scooter rider came from a side lane onto the main road and turned towards the wrong side of the road i.e. he turned into on-coming traffic. His sudden appearance and intrusion into on-coming traffic was on account of his own fault. Indeed, the claimant himself had stated to

the police, as recorded in the FIR, that he turned towards the right side of the lane i.e. he moved onto the on-coming traffic. That being the position, the claimant himself became a traffic hazard and contributed to the accident.

2. In the circumstances, a contributory negligence of 15% is apportioned to him. Hence, the deduction to be made from the compensation amount shall be of Rs. 45,000/- [Rs. 3,00,000/- x 85/100 (15% contributory negligence)]. The payable compensation amount shall be Rs. 2,55,000/-.

3. The next argument is that the injured has suffered 20% permanent disability in his left lower limb on account of the accident. The compensation awarded to him is as under:-

“Thus, the total compensation is assessed as under:-

1. Medical bills	Rs. 3,72,116/-
2. Loss of studies/income	Rs. 75,000/-
3. Conveyance, special diet & attendant charges.	Rs. 25,000/-
4. Compensation under non-pecuniary heads	Rs. 3,00,000/-
5. Pain and suffering caused to the parents	Rs. 1,00,000/-
6. Loss of marriage prospects	Rs. 1,00,000/-
Total =	Rs. 9.72.116/-
Rounded off to =	Rs. 9.73.000/-”

4. It is the appellant's case that there is contributory negligence on the part of the claimant, therefore, amount payable under aforementioned heads is on the higher side. He refers to the dicta of the Supreme Court in ***Mallikarjun vs Divisional Manager, National Insurance Co. Ltd. & Anr.*** (2014) 14 SCC 396, which has held *inter alia*, as under:-

“8. While considering the claim by a victim child, it would be unfair and improper to follow the structured formula as per the Second Schedule to the Motor Vehicles Act for reasons

more than one. The main stress in the formula is on pecuniary damages. For children there is no income. The only indication in the Second Schedule for non-earning persons is to take the notional income as Rs 15,000 per year. A child cannot be equated to such a non-earning person. Therefore, the compensation is to be worked out under the non-pecuniary heads in addition to the actual amounts incurred for treatment done and/or to be done, transportation, assistance of attendant, etc. The main elements of damage in the case of child victims are the pain, shock, frustration, deprivation of ordinary pleasures and enjoyment associated with healthy and mobile limbs. The compensation awarded should enable the child to acquire something or to develop a lifestyle which will offset to some extent the inconvenience or discomfort arising out of the disability. The appropriate compensation for disability should take care of all the non-pecuniary damages. In other words, apart from this head, there shall only be the claim for the actual expenditure for treatment, attendant, transportation, etc.

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12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc. should be, if the disability is above 10% and up to 30% to the whole body, Rs 3 lakhs; up to 60%, Rs 4 lakhs; up to 90%, Rs 5 lakhs and above 90%, it should be Rs 6 lakhs. For permanent disability up to 10%, it should be Rs 1 lakh, unless there are exceptional circumstances to take a different yardstick.

13. In the instant case, the disability is to the tune of 18%. The appellant had a longer period of hospitalisation for about two months causing also inconvenience and loss of earning to the parents. The appellant, hence, would be entitled to get the compensation as follows:

<i>Head</i>	<i>Compensation amount</i>
<i>Pain and suffering already undergone and to be suffered in future, mental and physical shock, hardship, inconvenience, and discomforts, etc. and loss of amenities in life on account of permanent disability.</i>	<i>Rs. 3,00,000</i>
<i>Discomfort, inconvenience and loss of earnings to the parents during the period of hospitalisation.</i>	<i>Rs. 25,000</i>
<i>Medical and incidental expenses during the period of hospitalisation for 58 days.</i>	<i>Rs. 25,000</i>
<i>Future medical expenses for correction of the malunion of fracture and incidental expenses for such treatment.</i>	<i>Rs. 25,000</i>
<i>Total</i>	<i>Rs. 3,75,000</i>

5. The Court would note that in the present case, the injured has suffered 20% permanent disability apropos his left lower limb. The learned Tribunal has opined that his chances of getting married have reduced. It has awarded him Rs. 1 lac towards “loss of marriage prospects”. There is no reason to interfere with the impugned order to this extent.

6. Furthermore, since his disability is 20%, therefore, the amount of Rs. 3 lacs is a fair compensation in terms of ***Mallikarjun*** (*supra*). Let the compensation towards “Medical Bills” of Rs. 3,72,116/- and towards “Conveyance, Special Diet & Attendant Charges” as awarded in the impugned order be released to the beneficiary (ies) of the Award.

7. The learned counsel for the appellant further submits that in ***Kumari Kiran vs. Sajjan Singh & Ors.*** (2015) 1 SCC 539, the Supreme Court has awarded Rs. 25,000/- each to the parents for compensation towards “pain and suffering” for the injuries caused to their minor child. The Court would note that in ***Kumari Kiran*** (*supra*), the accident happened in 2009, whereas

in the present case, the accident occurred in 2013. Much time has gone by, circumstances have changed and lifestyle and aspirations of people have also enhanced. It is pertinent to note that ***Kumari Kiran*** (*supra*) has not limited the quantum towards “pain and suffering” undergone by parents, to only Rs. 25,000/-. In the circumstances, the award of Rs. 50,000/- to each of the parents in the year 2013 is justified and does not warrant any interference.

8. No monies would be payable towards “loss of studies/income”. Accordingly, let total payable amount of Rs. 8,53,000/- (Rs. 9,73,000/- less Rs. 75,000/- less Rs. 45,000/- = Rs. 8,53,000/-), alongwith interest accrued thereon in terms of the Award, be released to the beneficiaries of the Award, as per the scheme of disbursement specified therein.

9. The appeal is disposed-off in the above terms.

10. Statutory amount of Rs. 25,000/-, alongwith interest accrued thereon, be returned to the appellant.

NAJMI WAZIRI, J.

SEPTEMBER 03, 2019

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