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

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Decided on: 18.11.2019

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MAC.APP. 1151/2018 & CM APPL. 53915/2018

ORIENTAL INSURANCE CO LTD

..... Appellant

Through: Mr. Pankaj Seth, Advocate.

versus

OM PRAKASH & ANR

..... Respondents

Through: Mr. Harsh Kumar, Advocate for R-2
alongwith R-2.
(Mob.-9910444183).

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. The appellant impugns the award of compensation dated 10.10.2018 passed by the learned MACT in MACP No. 182/2017 only apropos the quantum of compensation. The said compensation has two components: i) re-imbursement of medical bills and ii) compensation towards 'pain and suffering'. The impugned order has relied upon the decision of this Court in ***North Delhi Municipal Corporation vs. Ganesh Kumar*** decided on 13.07.2018 in MAC APP. No. 422/2018 which held *inter alia*:-

"6. Learned counsel for the appellant urged at the time of hearing that the respondent is permanently employed with the appellant and has not suffered any loss of income. It is submitted that the respondent is not entitled to the

compensation for loss of income as awarded by the Claims Tribunal.

7. Learned counsel for the respondent urged at the time of hearing that the compensation awarded by the Claims Tribunal under the heads of loss on account of pain and suffering and loss of amenities of life is grossly inadequate. It is further submitted that no compensation has been awarded for disfiguration.

8. The respondent is present in Court and his condition has been seen. On 17th May, 2018, the respondent had handed over two photographs, one prior to the accident and one after the accident.

9. There is merit in the appellants contention that the respondent has not suffered any loss of income and therefore, the compensation of Rs.10,86,800/- awarded by the Claims Tribunal under the head of loss of earning capacity is liable to be set aside.

10. The compensation awarded by the Claims Tribunal under the heads of pain and suffering and loss of amenities of life is grossly inadequate. In Master Mallikarjun v. Divisional Manager, The National Insurance Company Ltd., (2014) 14 SCC 396, the Supreme Court directed the non-pecuniary compensation towards pain and suffering and loss of amenities of life in respect of permanent disability of more than 60% upto 90% to be Rs.5,00,000/-. In the present case, the respondent has suffered 71% permanent disability relating to auditory & head nerve injury. The compensation for pain and suffering and loss of amenities of life on account of permanent disability is enhanced from Rs.50,000/- to Rs.5,00,000/-.

11. The Claims Tribunal has not awarded any compensation for disfiguration. The respondent has been

completely disfigured and the compensation under the head of disfigurement is assessed as Rs.3,50,000/-.”

2. The Court would note that while considering the ratio of ***Mallikarjun vs. Divisional Manager, National Insurance Company Limited and Anr.*** (2014) 14 SCC 396 and in ***Ganesh Kumar*** (supra), the compensation for ‘pain and suffering’ was enhanced by this Court from Rs. 50,000/- to Rs. 5 lacs, because ***Mallikarjun*** (supra) postulates the said amounts for permanent disability which was 60% to 90%. For injuries suffered upto 30%, the compensation for ‘pain and suffering’ would be Rs. 3 lacs; upto 60%, Rs. 4 lacs and upto 90% Rs. 5 lacs.
3. In the present case, the injured has suffered 33% disability. In the circumstance, the quantum of compensation of Rs. 4 lacs towards ‘pain and suffering’ is justified and it calls for no interference.
4. The appeal is without merit and is, accordingly, dismissed.
5. This is the third appearance of respondent no. 1, in the circumstance, the statutory amount, alongwith interest accrued thereon, shall be paid to respondent no. 1 as costs of litigation.
6. At this stage, the learned counsel for respondent no. 1/injured states that the accident happened in the year 2016. The appellant seeks release of some monies to repay the loan which he had taken for marriage of his daughter which was held on 27.04.2019. He states that his daughter is presently happy in her matrimonial home and he would like to settle his loans. He states that the loan was borrowed by him from one Mr. Rampal

and states that he will furnish details apropos his loan transactions as well as bank details of Mr. Rampal.

7. Liberty is granted to respondent no. 1 to move such application in due course.

8. For the moment, in view of the aforementioned circumstance, of the awarded amount, let Rs. 1.5 lacs be released to respondent no. 1 directly into his bank account being Savings Bank Account No. 37593132845, IFSC Code:- SBIN0014419, Jaffarpur Kalan Branch, Delhi.

NAJMI WAZIRI, J

NOVEMBER 18, 2019

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सत्यमेव जयते