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

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Decided on: 10.01.2020.

+ **MAC.APP. 6/2020 & CM APPL. 533/2020**

CHOLAMANDALAM MS GEN INSURANCE CO LTD

..... Appellant

Through: Mr. Pankaj Gupta, Advocate for Ms.
Suman Bagga, Advocate.

versus

PANKAJ KASHYAP & ORS

..... Respondents

Through: Mr. S.C. Juneja and Mr. Sanjay
Mishra, Advocates for R-1 along with
R-1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

CAV 13/2020

1. Since the learned counsel named above enters appearance on behalf of the caveator, the caveat stands discharged.

CM APPL. 534/2020 (Exemption)

2. Exemption allowed, subject to all just exceptions.

3. The application stands disposed-off.

MAC.APP. 6/2020 & CM APPL. 533/2020

4. This appeal impugns the award of compensation dated 10.10.2019 passed by the learned MACT in MACP No. 24/2012, on the ground that the

compensation towards 'loss of future income' for the period of 8 years, during the pendency of the claim proceedings, is unwarranted. The said argument is untenable because as a result of the motor accident, the 'loss of future prospects' would be payable from the date of injury. The mere fact that the claimant had been paid his regular salaries in the interim would not lessen or negate his right and entitlement for compensation towards 'loss of future income' as a result of the disability. The impugned order has awarded the same as:- Rs. 12,000/- (monthly income) x 12 (months) x 18 (multiplier) x 50/100 (future prospects) = Rs. 12,96,000/-. The appellant's argument is untenable and is accordingly rejected.

5. The appellant further contends that the salary of Rs. 12,000/- per month was never proven. However, the Court would note that the learned Tribunal had considered the salary slip of the injured, marked as Ex. PW1/11, according to which the injured was working with M/s Balaji Engineering Works, Sita Ram Bazar, Delhi-110006, as Electrician-cum-Site Manager, for about 3 years and he was paid a consolidated salary of Rs. 12,000/- per month. The learned Tribunal was of the view that the components of his salary of Rs. 12,000/- included Rs. 8,000/- as basic salary, Rs. 1,000/- as mobile expenses and Rs. 3,000/- as conveyance allowance. The learned Tribunal was also of the view that the breakup of the salary as well as the quantum itself, were not on the higher side. The Court would note that the accident occurred on 02.10.2011, the minimum wages applicable to a skilled workman in Delhi of that time was Rs. 8,112/- i.e. roughly in the same range. Therefore, the assumption of the learned Tribunal that the said salary being paid to the injured was reasonable, is a fair

conclusion and cannot be faulted with. Therefore, this argument too being untenable, is rejected.

6. The claimant is present in the Court. He is moving with the assistance of a walker and is unable to move properly. He is using an orthopedic support for his movement and that too very gingerly. He is also unable to walk long distances. His pelvic region has also been seriously impaired. The impugned order has recorded his injury as under:

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16. As per the discharge summary Ex.PW1/9 the petitioner was diagnosed with Fracture Pelvis with Fracture Both Bones left leg (Grade III B). He was firstly taken to Orbit Hospital where he got admitted for two days. Thereafter, he was shifted to Lok Nayak Hospital, where he remained hospitalised from 04.10.2011 to 02.01.2012. He was operated. He also remained hospitalised in Apollo Hospital from 21.01.2013 to 28.01.2013. There he was diagnosed with Urethral stricture with Pelvic fracture urethral distraction defect. He was again hospitalised in Apollo Hospital from 01.06.2013 to 11.06.2013. During cross examination he voluntarily stated that due to the urological problem he has to carry a urological bag i.e. urethra for passing urine every time and people avoid to sit with him. As per the disability certificate Ex.PWI/X-7 he has suffered 89% permanent physical impairment in relation to his Both Lower Limbs....”
सत्यमेव जयते

The photograph of the claimant is taken on record. The same produced as under:-



In this circumstance, a fair and just compensation would include that he be made mobile to the optimum extent possible. Accordingly, the Court is of the view that the injured/claimant be provided with a motorized wheelchair of standard quality, with life time warranty, within three weeks of receipt of a copy of this order. The insurer shall also provide the telephone numbers and E-mail Ids of three responsible officers of the insurance company, who shall respond to the injured/claimant in case any difficulty arises apropos the functioning of the wheel chair. Should it require to be changed or upgraded, the same shall be at the cost of the insurance company. By the 5th day of January and August, the insurer shall ascertain the functioning of the wheelchair and otherwise rectify any malfunctioning of it within two days of receipt of such intimation. The claimant/injured is at liberty to approach the Court in case of any difficulty. An affidavit of compliance of supply of wheelchair shall be filed by the insurer in four weeks after receipt of copy of this order. In default thereof, the case shall be listed for directions.

7. The awarded amount, alongwith interest @9% p.a. from the date of filing of the claim petition, shall be deposited before the learned Tribunal, within three weeks from the date of receipt of a copy of this order, to be released to the beneficiary(ies) of the Award, in terms of the scheme of disbursement specified therein.

8. The appeal is without merit and is accordingly dismissed. The pending application is also dismissed.

9. The statutory amount, alongwith interest accrued thereon, be deposited in the 'AASRA' Fund created by this Court.

NAJMI WAZIRI, J

JANUARY 10, 2020

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