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

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Decided on: 16.01.2020

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MAC.APP. 610/2017

FUTURE GENERALI INDIA INSURANCE CO LTD Appellant
Through: Mr. Amit Kumar Maihan, Adv.

versus

ARCHIT SADH & ANR Respondents
Through: Mr. Ravi Sabharwal, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

MAC.APP. 610/2017 & CM No. 25160/2017

1. The appellant impugns the award of compensation dated 06.05.2017 passed by the learned Tribunal in MACP No. 120/2016 on the ground that the salary of the claimant was not proven. The learned counsel for the appellant submits that if the claimant was paid Rs. 23,000/- per month, then there ought to be some record of the same, like transfer via banking transactions, but no such evidence was produced.

2. In his testimony, PW1-Sh. R.S. Yadav, Manager (P&A), HR Department, Rakam Exports, D-63, Noida, Uttar Pradesh, had stated as under:

“...I have brought the summoned record pertaining to Sh. Archit who was working in our organization on the post of Maintenance Executive w.e.f. 02.06.2014 till his accident on 17.05.2015. He was being paid salary of Rs. 23,000/- per month. He was paid last salary for the month of May, 2015.

The job of Sh. Archit was field job. After his accident on 17.05.2015 he never joined his services with our organization due to the injuries sustained in the accident.

The services of Sh. Archit was confirmed vide letter dated 01.12.2016. Initially his salary was Rs. 20,000/- and the same was revised w.e.f. 01.01.2015 to Rs. 23,000/- per month. Authority Letter in my favour is Ex. PW1/1, which bears the signature of Sh. Avinash Sadh who is the proprietor of our firm. Attested copy of Factory License is Ex. PW1/2. Appointment Letter is Ex. PW1/3 (OSR). Confirmation Letter is Ex. PW1/4. Letter dated 15.12.2014 whereby the salary of Sh. Archit was revised is Ex. PW1/5. The copy of Salary Transfer Letter for the month of January, 2015 is Ex. PW1/6 (colly.) pages. Attested copy of Wages Payment Register for the month of January, 2015 is Ex. PW1/7 (colly.) 6 pages wherein the name of Sh. Archit is mentioned at Sr. No. 56. The attested copy of Attendance Register (Form No. 12) for the month of January, 2015 is Ex. PW1/8 wherein the name of Sh. Archit is mentioned at Sr. No. 11 (OSR).

The copy of Salary Transfer Letter for the period w.e.f. February, 2015 to May, 2015 is Ex. PW1/9 (colly.) 16 pages. Attested copy of Wages Payment Register for the period w.e.f. February, 2015 to May, 2015 is ex. PW1/10 (colly.) 24 pages. The attested copy of Attendance Register (Form No. 12) for the period w.e.f. February, 2015 to May, 2015 is ex. PW1/11 (colly) 4 pages (OSR).

The Copy of Salary Transfer Letter for the month of June, 2015 is Ex. PW1/12 (colly.) 4 pages. Attested copy of Wages Payment Register for the period w.e.f. June, 2015 is Ex. PW1/13 (colly.) 7 pages. The attested copy of Attendance Register (Form No. 12) for the month of June, 2015 Ex. PW1/14.

The Certificate dated 16.10.2015 was issued by our office and the same is Ex. PW1/15 which bears the signature of sh. Deepak Mehra, General Manager of our organization.

Xxxxx by Ms. Yashi Tyagi, learned counsel for Respondent No.3.

Sh. Archit was working in our organization w.e.f. 02.06.2014. The mode of payment of salary to Sh. Archit was made by transferring the same into his Bank account. I have filed the record pertaining to transfer of salary of Sh. Archit for the period w.e.f. January, 2015 to June, 2015 (Vol.) no salary was given to Sh. Archit after May, 2015. I have not filed the document pertaining to transfer of salary of Sh. Archit for the period w.e.f. June, 2014 to December, 2014. It is correct that I have not supplied any document to the Investigating Officer with regard to the employment of sh. Archit. (vol.) Investigating officer has not demanded any document from our firm. No TDS has been deducted from the salary of Sh. Archit. It is wrong to suggest that the document produced by the witness are forged and fabricated documents. It is wrong to suggest that Sh. Archit was not employee of our firm....”

3. What emanates from the above is that the claimant was employed with the aforesaid company. His appointment letter, confirmation letter, salary transfer letter, wages payment register and attendance register, etc. had been duly produced before the learned Tribunal and accepted as proof of employment and payment of salary. It has also been accepted by the said deponent that the payments were made through transfer of monies into the employees' bank accounts. Nothing adverse has come out in the cross-examination, against the assertion, that the claimant was employed with the said company and was being paid Rs. 23,000/- per month. Therefore, this argument of the appellant is without merit and is, accordingly, rejected.

4. The learned counsel for the appellant contends that compensation towards 'loss of future prospects' @ 50% has been granted, whereas it should have been 40%. The Court would note that for a paraplegic, the Supreme Court in *Parminder Singh v. New India Assurance Co. Ltd. & Ors*

2019 SCC OnLine SC 802 has awarded loss of future prospect @ 50%. There is no error in the said grant by the learned Tribunal. The appellant's argument in this regard being without merit is rejected.

5. The appellant further impugns the award of compensation towards attendant charges of Rs. 3,13,100/-. The claimant being a paraplegic needs the assistance of an attendant round the clock. For the moment, the impugned order has granted attendant charges only for 12 hours, at monthly salary of Rs. 9,048/- i.e. the minimum wages applicable to an unskilled workman. The Court is of the view that a fair and just compensation would warrant payment of attendant charges from the day the need for an attendant arose. Award of Compensation in this regard should reflect the ground reality and should not be a notional or illusory compensation. The year from which attendant charges are granted is 2017. The motor vehicular accident occurred in the year 2015 which eventually resulted in the disability. An attendant would have been required right from the moment the accident took place. Each year, the minimum wages are notified twice by the State Government. In the circumstances, the attendant would be payable as per the rates notified by the Government of NCT of Delhi for an unskilled workman from the year when the injured became disabled. Accordingly, attendant charges be paid as per the minimum wages notified by the Government of NCT of Delhi for an unskilled workman from 18.05.2015 i.e. the date of the accident. The same shall be:

Year	Minimum Wages	Amount
2015	[Rs.9048/- + Rs. 9,178/-÷ 2 x 7]	Rs. 63,791/-
2016	[Rs. 9,568/- + Rs. 9,724/-÷ 2 x 12]	Rs. 1,15,752/-

2017	[Rs. 13,584/- + Rs. 13,584/- ÷ 2 x 12]	Rs. 1,63,008/-
2018	[Rs. 13,896/- + Rs. 14,000/- ÷ 2 x 12]	Rs. 1,67,376/-
2019	[Rs. 14,468/- + Rs. 14,842 ÷ 2 x 12]	Rs. 1,75,860/-
	TOTAL	Rs. 6,85,787/-

6. Apropos 'future attendant charges', the insurance company shall pay the minimum wages applicable to an unskilled workman on the actual rates as notified by the GNCTD for the life-time of the injured. For this purpose, the insurance company shall deposit Rs. 15 lacs. This money shall be kept in an interest bearing FDR to enure to the benefit of the injured-claimant. Each month, the minimum wages shall be released by the Bank directly into the account of the claimant. Should the monies get exhausted, it shall be replenished by an equal amount by the insurer. Should the monies out-last the injured claimant, the insurance company shall have a lien over it, and it shall be returned to the insurer alongwith interest accrued on the remaining amount. Monies already paid towards attendant charges shall be set off against the enhanced amount.

7. The aforesaid amount, alongwith interest @ 9% p.a. from the date of filing of the claim petition till its realization, shall be deposited before the learned Tribunal, within three weeks from the date of receipt of 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 stands disposed off accordingly.

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

CM APPL. 8664/2019 (condonation of delay of 2 days in filing cross-

objections by R-1)

10. This application seeks condonation of delay of 2 days in filing the cross-objections by respondent no.1. For the reasons stated therein, the application is allowed and the delay is condoned.

11. The application stands disposed off.

CM APPL. 8662/2019 (Cross Objections By R-1 & 8663/2019 (addl./ Evidence)

12. Let the cross-objection, filed by the respondent, be registered as a separate MAC. APP. by the Registry.

13. Issue notice. Mr. Amit Kumar Maihan, Advocate accepts notice for the insurance company. At joint request, the appeal is taken up for disposal.

14. The claimant seeks enhancement of the compensation amount. It is argued that he is still undergoing physiotherapy and rehabilitative exercises for which he requires change of catheter roughly five times a day for which he incurs Rs. 18,000/- per month. In view of the above, for future medical expenses, the insurance company shall set aside Rs. 5 lacs for the moment, from which monies will be released to the claimant upon bills being presented and verified by it in this regard.

15. The claimant wishes to enhance his mobility. His request is valid. Let a motorised wheelchair be made available to him, to his comfort and satisfaction, within a period of three weeks from the date of receipt of a copy of this order. The vendor for the same shall be identified by the claimant himself. The wheelchair shall have a lifetime warranty. The insurer shall directly pay the supplier of the wheelchair, the cost of the same on the basis of an advance invoice. The insurer shall also provide the telephone numbers

and E-mail Ids of its three responsible officers, 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 Court had similarly directed the provision of a motorized wheelchair with a life time warranty to the injured/claimant in *The United India Insurance Co. Ltd. vs. Phool Kumari & Ors.*, MAC. APP. 533/2017 decided on 26.08.2019. The SLP No. 27876/2019 against it, preferred by the insurer was dismissed by the Supreme Court on 04.12.2019.

16. The claimant has been granted Rs. 2 lacs and Rs. 1 lacs for ‘pain and suffering’ and ‘loss of amenities of life’, respectively. He was in the prime of his life and had his whole life ahead of him. He has now been put to a stage of whim and mercy on others to even interact socially. In the circumstances, his deprivation being absolute, the compensation towards ‘pain and suffering’ and ‘loss of amenities’ needs to be enhanced. Accordingly, the same are enhanced to Rs. 5 lacs and Rs. 4 lacs respectively.

17. The enhanced amount, in both the appeals: (i) filed by the insurance company, and (ii) filed by the claimant, alongwith interest thereon @ 9% per annum from the date of filing of the claim petition till its realization, shall be deposited by the insurance company before the learned Tribunal, within a period of three weeks from the date of receipt of copy of this order, to be released to the claimant in terms of the scheme of disbursement specified therein. The claim petition was suspended for five months on account of the

claimant, therefore, interest shall not be paid for five months from the date of filing of the claim petition.

18. The appeal is disposed-off accordingly.

NAJMI WAZIRI, J

JANUARY 16, 2020/kk

