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

Date of decision: 21st July, 2023

+ MAC.APP. 36/2023 & CM APPL. 34315/2023
THE UNITED INDIA INSURANCE CO.LTD Appellant
Through: Mr.Ravi Sabharwal, Adv.

versus

BABY RAKSHA & ORS. Respondents
Through: Mr.Anshuman Bal, Adv. for R-
1.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed challenging the Award dated 31.10.2022 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, West-01, Delhi (hereinafter referred to as the 'Tribunal') in MACT Case no.77877/16, titled ***Baby Raksha (Minor) v. Sandeep Kumar & Ors.***

2. By way of an application, being CM Appl. No. 34315/2023, the claimant, that is, respondent no.1 has filed the cross objection seeking enhancement of the amount awarded in her favour. The same is also being considered by this order.

3. It is not in dispute in the appeal or the cross objection that on 05.03.2016, the respondent no.1 alongwith her Mausi (mother's sister) was going on foot from Indra Market to her house when a Tata 407,



and hit the respondent no.1, as a result of which she was seriously injured.

4. Dr.Naresh Chandra was examined as PW-2. In his statement, he stated that the respondent no.1 suffered from 68% Permanent Disability in relation to her right lower limb. He further stated that the disability suffered by the respondent no.1 is non-progressive and not likely to improve, and on account of the disability suffered by her on her right foot and ankle joint, she would have difficulty in standing, walking, sitting on the floor, and running. He further states that the respondent no.1 can, however, do her daily routine work by her both upper limbs as she has not suffered any disability on those parts. It has also come on record that the respondent no.1 was 5 years of age on the date of the accident.

5. Based on the above facts and the evidence produced before the learned Tribunal, the learned Tribunal assessed the compensation payable to the respondent no.1 on account of the loss of her earning capacity basis the Minimum Wages of a graduate on the date of the accident. The first challenge of the appellant is on this account.

6. The learned counsel for the appellant, placing reliance on the judgments of the Supreme Court in *Master Mallikarjun v. Divisional Manager, the National Insurance Company Ltd. & Anr.*, (2014) 14 SCC 396; *Kurvan Ansari alias Kurvan Ali & Anr. v. Shyam Kishore Marmu & Anr.*, (2022) 1 SCC 317; and *Rajendra Singh & Ors. v. National Insurance Company Ltd. & Ors.*, (2020) 7 SCC 256, submits that the learned Tribunal has erred in taking the minimum



income. He submits that as the respondent no.1 was only a child, income should have been notionally determined and as was done in the case of **Kurvan Ansari** (supra), the same should have been considered as Rs.25,000/- per annum.

7. He further submits that even if the minimum wages were to be considered, the same could not have been considered for what is prescribed for a graduate, as it has come on record that the Mausi/Aunt, with whom the respondent no.1 was walking, was an illiterate lady and, therefore, there was nothing on record for the learned Tribunal to presume that the respondent no.1 would go on to complete her graduation.

8. On the other hand, the learned counsel for the respondent no.1, placing reliance on the judgments of the Supreme Court in **Kajal v. Jagdish Chand & Ors.**, (2020) 4 SCC 413; **Abhimanyu Pratap Singh v. Namita Sekhon and Anr.**, (2022) 8 SCC 489; and **Master Ayush v. Branch Manager, Reliance General Insurance Co. Ltd.**, (2022) 7 SCC 738, submits that the loss of future earnings have been rightly assessed on the basis of the Minimum Wages prescribed for a graduate.

9. I have considered the submissions made by the learned counsels for the parties.

10. In **Kajal** (supra), the Supreme Court, in case of a young child of 12 years, disapproved of the Courts below taking notional income as only Rs.15,000/- per annum, and observed as under:

“20. Both the courts below have held that since the girl was a young child of 12 years only notional income of Rs.15,000/- per annum



can be taken into consideration. We do not think this is a proper way of assessing the future loss of income. This young girl after studying could have worked and would have earned much more than Rs.15,000/- per annum. Each case has to be decided on its own evidence but taking notional income to be Rs.15,000/- per annum is not at all justified. The appellant has placed before us material to show that the minimum wages payable to a skilled workman is Rs.4846/- per month. In our opinion this would be the minimum amount which she would have earned on becoming a major. Adding 40% for the future prospects, it works to be Rs.6784.40/- per month, i.e., 81,412.80 per annum. Applying the multiplier of 18 it works out to Rs.14,65,430.40, which is rounded off to Rs.14,66,000/-."

11. Relying upon the judgment in **Kajal** (supra), the Supreme Court in **Master Ayush** (supra), again disapproved of the High Court in determining the notional income of the victim as Rs.15,000/- per annum, and instead, placing reliance on the Notification issued by the State Government prescribing the minimum wages for a skilled workman, determined the compensation payable on the basis thereof.

12. In **Abhimanyu Pratap Singh** (supra), the Supreme Court assessed the notional income of a child, who was 5 ½ years of age, at Rs.5,000/- per month.

13. In **Master Mallikarjun** (supra), it appears that there was no amount awarded to the injured towards loss of future earnings. While in the case of **Kurvan Ansari** (supra), the Court, while finding that the Award of loss of income by taking notional income at Rs.15,000/- per annum was inadequate, increased the same to Rs.25,000/- per annum.



It appears that in the said case, however, no submission was made for determining the loss of income on basis of the Notification for minimum wages.

14. In ***Rajendra Singh*** (supra), again there was no plea taken that the income has to be determined on the basis of the minimum wages.

15. In my view, in a case of a child, as the actual income or potential thereof cannot be determined, the minimum wages as notified and applicable on the date of accident would give a reasonable basis for determination of the income of the child. There can, however, be no hard and fast rule laid for this purpose. It would depend on a case-to-case, and for various circumstances, it can be shown as to why reliance on the Notification of the minimum wages may not be an appropriate method. However, in the present case, no such exceptional circumstance has been pointed out either by the appellant or the respondent no.1.

16. I, therefore, find no ground for interference with the Impugned Award in so far as the learned Tribunal placed reliance on the Notification on the minimum wages for determining the loss of income of the respondent no.1.

17. As far as the plea of the learned counsel for the appellant that the minimum wages for a graduate could not have been taken into account, in my view, taking the present standards of education in the society, it has to be presumed that the respondent no.1 would have studied further and completed at least graduation. Merely because her Mausi/Aunt was an illiterate lady, it cannot be presumed that even the respondent no. 1 would not have studied or completed her graduation.



Therefore, no fault can be found in the learned Tribunal taking the minimum wages applicable to the case of a graduate into account for determination of the loss of income of the respondent no. 1.

18. The learned counsel for the appellant challenges the Impugned Award also on the ground that though the respondent no.1 had suffered 68% permanent disability, the same was only in her right lower limb, and, therefore, the learned Tribunal has erred in adopting the same percentage of disability as functional disability for determination of loss of income of the respondent no.1. He submits that taking into account the injury suffered by the respondent no.1, the same should have been taken not more than 34%.

19. I am unable to agree with the submission made by the learned counsel for the appellant.

20. In **Raj Kumar v. Ajay Kumar and Anr.**, (2011) 1 SCC 343, the Supreme Court has laid down the following principles for determination of functional permanent disability of the injured:

“12. Therefore, the Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence:

(i) whether the disablement is permanent or temporary;

(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;

(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person.

If the Tribunal concludes that there is no permanent disability then there is no question



of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

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19. We may now summarise the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent



disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).

(iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.”

21. PW-2, in his statement referred hereinabove, has stated that the respondent no.1, on account of the disability, shall have difficulty in standing, walking, sitting on the floor, and running. There was no chance of improvement in her injury. In my view, taking into account the injury and the disability suffered by the respondent no. 1, the learned Tribunal has rightly taken the functional disability of the respondent as 68%.

22. This now brings me to further challenge to the Impugned Award by the respondent no.1.

23. The learned counsel for the respondent no.1 submits that the learned Tribunal has erred in awarding only a sum of Rs.1,00,000/- towards pain and suffering; Rs.50,000/- towards loss of amenities of life; Rs.50,000/- towards disfigurement; and Rs.1,50,000/- towards loss of marriage prospects. He submits that the Award on these heads



judgment of the Supreme Court in *Kajal* (supra), he submits that the Supreme Court, for loss of marriage prospects, has awarded Rs.3,00,000/- to the claimant therein, and for pain and suffering and loss of amenities, Rs.15,00,000/- was awarded.

24. I am unable to agree with the submission made by the learned counsel for the respondent no.1. In *Kajal* (supra), the Supreme Court was considering the case of a bright young girl, aged about 12 years, who suffered a head injury because of which she was left with very low Intelligence Quotient, and severe weakness in all her four limbs. She suffered from severe hysteria and severe urinary incontinence. Her disability was assessed at 100%. It was on those facts that the Supreme Court awarded the above amount. In the present case, as noted herein above, the functional disability of the respondent no.1 has been assessed at 68%. The injury suffered by her, though would cause immense discomfort and pain and suffering, cannot be equated with the case of *Kajal*(supra). At the same time, keeping in view the nature of the injury suffered by the respondent no.1, the award on the above heads is found to be inadequate.

25. Accordingly, the Award, on account of pain and suffering and amenities of life is enhanced to Rs.5,00,000/-, and for loss of marriage prospects is enhanced to Rs.5,00,000/-. As far as the compensation for disfigurement is concerned, I find no reason to enhance the compensation awarded.

26. The last challenge of the counsel for the respondent no.1 to the Impugned Award is on account of rate of interest of 6% awarded by the learned Tribunal. Placing reliance on the judgment of this Court in



National Insurance Co. Ltd. v. Yad Ram, Neutral Citation No. 2023:DHC:2194, the learned counsel for the respondent no. 1 submits that the date of accident being 05.03.2016, at least interest at the rate of 7.5% p.a. should have been awarded. I find merit in the said submission.

27. In ***Yad Ram*** (supra), this Court has held as under:

“28. Both sides have, by relying on decisions in support of their respective pleas regarding the rate of interest, prayed that this Court should lay down the rate at which interest should be granted so that the same can act as guidelines for the tribunals to uniformly follow. While Mr. Gaur has endeavoured to show that the rate of interest has been reduced to 6% p.a. by the Apex Court in some cases, Mr. Satya Narayan Padhee has relied on decisions wherein interest has been granted at 9% and even @12 % p.a. However, since I am of the view that no fixed rate of interest on compensation under the MV Act can be applied, I do not deem it necessary to deal with the decisions relied upon by the parties which all, I find turn on their peculiar facts. The duty to determine the appropriate rate of interest, having been bestowed on the Courts by the statute, it would not be desirable that any fixed rate of interest is laid down by this Court. The rate of interest has to be necessarily determined on a case to case basis; what may be a reasonable rate in one case may not be reasonable in another. I am, therefore, of the considered view that no uniform rate of interest can or should be prescribed on compensation under the MV Act.

29. Now coming to the facts of the present case. The fateful accident took place on 13.12.2016 in which three persons, namely Sh.Raj Kumar, a constable (GD) in the CRPF, his wife Smt. Seema and their minor daughter



Ritu, lost their lives, leaving behind two minor children of Sh. Raj Kumra nad Smt. Seema as also the aged parents of Sh. Raj Kumar. The award was passed on 29.01.2018, which is about thirteen and a half months after the accident. It cannot be denied that on account of sudden death of Sh. Raj Kumar, the family must have faced enormous set back as also financial difficulties but what needs to be noted is that the award was passed in just about one year. In December, 2016 when the accident took place, the rate of interest by banks on FDRs as per RBI guidelines was about 7.5% p.a., which stood reduced to 6.75% p.a. in March 2017 and remained at 6.75% p.a., in January 2018, at the time the award came to be passed. It is only in March, 2019 that the interest rose to 7% p.a., before reaching 7.40% p.a., whereafter, on account of the pandemic of Covid-19, it again slid down to 6.75% p.a. Since all the three family members died on the spot itself, it is not even the claimant's case that any amount was spent on their medical treatment. The claimants also did not set up any case before the learned Tribunal that in order to meet their daily expenses, they had to take loans either from any financial institution or from their friends/relatives, which was required to be repaired with interest.

30. In the backdrop of the aforesaid facts and taking into account that compensation awarded to the claimants comprises of not only the damages already suffered by them but also by way of advance payment towards the loss they would suffer in the future on account of the accident, I am of the considered view that the grant of interest @ 9% p.a. by the learned Tribunal was on the higher side. No doubt the Apex Court, has in some of its recent decisions, awarded interest @9% p.a. as in Kirti(supra) and in Rahul Sharma (supra), and has also awarded interest @ 12% p.a. in Satinder Kaur (supra), those cases



pertained to accidents which took place many years ago when even the bank rate of interest on FDRs was much higher. Furthermore, in those cases the matters had remained pending adjudication for many years. However, I also find that in some of its recent decisions i.e., Sidram v. The Divisional Manager, United India Insurance Co. Ltd., (2023) 3 SCC 439, Benson George (supra), Kausalya Bhoi v. Divisional Manager, Oriental Insurance Co. Ltd., 2022 SCC OnLine SC 646, awarded interest @ 6% p.a. There is yet another line of cases of the Apex Court in the recent past i.e., Sarup Singh @ Ram Saru v. HDFC Ergo General Insurance Co. Ltd., (2023) 1 SCC 159, Divya v. The National Insurance Co. Ltd., 2022 SCC OnLine SC 1488, Velayudhan v. National Insurance Co. Ltd., 2022 SCC OnLine SC 1168, wherein interest has been granted @7.5% p.a., thus re-affirming the principle that no uniform rate of interest can be laid down under the MV Act. In the light of the aforesaid and taking into account the facts of the present case as noted hereinabove, I am of the considered view that the claimants are entitled to receive interest @7.5% p.a. from the date of filing of the claim petition to the date of realization.”

28. In the present case, the accident had taken place on 05.03.2016. Keeping the above observations of the Court in ***Yad Ram*** (supra), in my view, the claimant/respondent no. 1 is held entitled to interest at the rate of 7.5% per annum. The Impugned Award shall stand modified to the above limited extent.

29. The parties shall appear before the learned Tribunal on 05.09.2023 for the re-determination of the total compensation payable by the appellant to the respondent no.1.

30. On the deposit of the awarded amount by the appellant, the



same shall be released in favour of the respondent no.1 in terms of the schedule of release stipulated in the Impugned Award.

31. The appeal and the cross objection are disposed of in the above terms.

NAVIN CHAWLA, J

JULY 21, 2023/Arya/ss

Click here to check corrigendum, if any

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Signing Date: 31.07.2023

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