$~22

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

Date of decision:4th August, 2023

\+ MAC.APP. 42/2023 & CM APPL. 3038/2023

THE UNITED INDIA INSURANCE CO.LTD. ..... Appellant
Through: Mr.Ravi Sabharwal, Adv.

versus

SH RAKESH KUMAR & ORS. ..... Respondents
Through: Mr.Varun Sarin & Parul Dutta, Advs. for R-1.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. The present appeal has been filed challenging the Award dated 06.08.2022 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, New Delhi District, Patiala House Courts, New Delhi (hereinafter referred to as the 'Tribunal') in DAR no.26/19.

2. The limited challenge of the appellant to the Impugned Award is against the direction of the learned Tribunal directing that the cost of the prosthetic/artificial limb and its maintenance, if any, for the respondent no. 1/Claimant shall be paid directly by the appellant herein to the company concerned from which it has been procured by the respondent no. 1, on production of requisite invoices and other related documents pertaining to the same by the respondent no. 1.

3. The learned counsel for the appellant submits that the compensation has to be awarded in terms of a determinative figure and cannot be open ended, as has been done by the learned Tribunal by way of the Impugned Award. In support, he places reliance on the judgment of the Supreme Court in ***HDFC ERGO General Insurance CO. Ltd. v. Mukesh Kumar & Ors.,*** 2021 SCC OnLine SC 859, wherein it has been held that the process of determination of such compensation cannot be by a continuing *mandamus* and the said determination must take place at one go.

4. The learned counsel for the respondent no.1 does not dispute the above proposition of law. He submits that in the present case, the appellant had produced before the learned Tribunal, a quotation dated 16.07.2019 issued by M/s P&O International Pvt. Ltd. for procurement of the artificial limb for a sum of Rs.3,86,150/-. He further submits that an artificial limb has a limited life and requires constant maintenance and upkeep, and, therefore, a requisite amount in this regard should be awarded to the claimant.

5. I find merit in the submissions made by the learned counsels for the parties. The learned Tribunal has erred in not specifying a specific amount as compensation for the prosthetic/artificial limb that the respondent no. 1 requires. In ***HDFC ERGO*** (supra), the Supreme Court, on a challenge to a similar award to non-determinative compensation for an artificial limb, observed as under:

> *"7. Learned counsel for the appellant has referred two judgments of this Court before us in Nagappa v.Gurudayal Singh, ((2003) 2 SCC 274 and Sapna v. United India Insurance Co.Ltd. (2008) 7 SCC 613 opining that while determining compensation under the said Act*

there is no provision providing for passing of a further award once the final award is passed. The future eventualities are to be taken into consideration at that time. It was observed that:

> *"23.......Future medical expenses required to be incurred can be determined only on the basis of fair guesswork after taking into account increase in the cost of medical treatment."*

8. In our view, the process of determination of such compensation cannot be by a continuing mandamus, in a colloquial sense, and the determination must take place at one go.

9. The aforesaid principle is not even disagreed to or contested by the respondents but what is submitted is that there must be a provision made fixing a lump sum amount for maintenance/replacement of the prosthetic limb, if necessary. We agree with the submission and in a larger canvas consider it appropriate to direct that in such kind of cases of providing facility of prosthetic limb, appropriate amount may be quantified towards such maintenance."

6. While the direction of the learned Tribunal to the appellant for providing and maintaining the prosthetic/artificial limb of the respondent no. 1, cannot be maintained and is accordingly set aside, at the same time, the respondent no. 1 has to be awarded a just and reasonable compensation towards the same.

7. In ***Mohd. Shabeer @ Shabir Hussain v. Regional Manager, U.P. State Road Transport Corporation,*** 2022 SCC OnLine SC 1701, the Supreme Court, in almost identical facts, where the age of the injured/claimant was 37 years, held as under:-

"COMPENSATION FOR THE PURCHASE AND MAINTENANCE OF THE PROSTHETIC LEG

22. The High Court has awarded a compensation of Rs.5,20,000/- for the prosthetic limb and Rs.50,000/- towards repair and maintenance of the same. The Appellant submits that the cost of the prosthetic limb itself is Rs.2,60,000/- and the life of the prosthetic limb is only 5-6 years. The prosthetic limb also requires repair and maintenance after every 6 months to 1 year, and each repair costs between Rs.15,000/0 to Rs.20,000/-. This would mean that the prosthetic limb would last the Appellant for only 15 years under the current compensation. The Appellant at the time of the accident was aged 37 years and has a full life ahead. It has been clearly stated by this Court in the case of Anant Son of Sidheshwar Dukre (supra) that the purpose of fair compensation is to restore the injured to the position he was in prior to the accident as best as possible. The relevant paragraph of the judgment is being extracted herein:

> *"In cases of motor accidents leading to injuries and disablements, it is a well settled principle that a person must not only be compensated for his physical injury, but also for the non-pecuniary losses which he has suffered due to the injury. The Claimant is entitled to be compensated for his inability to lead a full life and enjoy those things and amenities which he would have enjoyed, but for the injuries."*

The purpose of compensation under the Motor Vehicles Act is to fully and adequately restore the aggrieved to the position prior to the accident.

As per the current compensation given for the prosthetic limb and its maintenance, it would last the Appellant for only 15 years, even if we were to assume that the limb would not need to be replaced after a few years. The Appellant *was only 37 years at the time of the accident, and it would be reasonable to assume that he would live till he is 70 years old if not more. We are of the opinion that the Appellant must be compensated so that he is able to purchase three prosthetic limbs in his lifetime and is able to maintain the same at least till he has reached 70 years of age. For the Prosthetic limbs alone, the Appellant is to be awarded compensation of Rs. 7,80,000 and for maintenance of the same he is to be awarded an additional Rs. 5,00,000/-."*

8. The above ratio would be fully applicable to the facts of the present case. The respondent no. 1 had produced a quotation dated 16.07.2019 for a sum of Rs.3,86,150/- from M/s P&O International Pvt. Ltd. for the procurement of the artificial limb. With the passage of time, this amount must have now increased. The respondent no.1, at the time of the accident, was 38 years old. The appellant must be compensated so that he is able to purchase three prosthetic limbs in his lifetime and is able to maintain the same at least till he reaches 70 years of age. I, therefore, find an amount of Rs.20,00,000/- as just and reasonable compensation to be awarded to the respondent no.1 towards purchase and maintenance of the prosthetic limbs. The impugned Award shall stand modified to this extent.

9. The appellant shall, within six weeks from today, deposit the amount awarded by the learned Tribunal by way of the impugned Award, including the amount awarded by this judgment, along with interest @ 6% per annum from the date of the filing of the Detailed Accident Report till the date of the actual deposit.

10. Out of the amount deposited by the appellant with the learned Tribunal, the amount for the procurement of the artificial limb, as per

the invoice that shall be produced by the respondent no.1, shall be released by the learned Tribunal directly to the company from which the respondent no.1 proposes to procure the artificial limb. The remaining amount shall be released to the respondent no.1 in terms of the schedule as prescribed in the Impugned Award by the learned Tribunal.

11. The present appeal, also the pending application, is disposed of in the above terms.

12. The statutory amount deposited by the appellant be released to the appellant along with interest accrued thereon.

NAVIN CHAWLA, J

AUGUST 4, 2023/Arya/AS

Click here to check corrigendum, if any