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

Date of decision: 19th July, 2023

+ MAC.APP. 22/2022 & CM APPL. 4665/2022
SBI GENERAL INSURANCE CO. LTD Appellant
Through: Mr.Amit Kumar, Adv.

versus

RAJ KUMAR Respondent
Through: Mr.Gaurav Parashar, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed challenging the Award dated 05.08.2020 passed by the learned Motor Accidents Claims Tribunal, North West, Rohini, Delhi (hereinafter referred to as the 'Tribunal') in MACT Case No.450616/16/14, titled ***Raj Kumar v. Rajender & Ors.***

2. The limited challenge by the appellant to the Impugned Award is on two grounds:

- a) That the learned Tribunal has erred in awarding an amount of Rs.9,81,214/- in favour of the respondent herein, on account of 'compensation on account of disability'; and
- b) That the learned Tribunal has erred in awarding interest at the rate of 9% p.a.

3. The learned counsel for the appellant, placing reliance on the judgment of the Supreme Court in ***Raj Kumar v. Ajay Kumar & Anr.***,

Signature Not Verified SCC 343; and of this Court in ***Raj Kumar Malik v. United***

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India Insurance Co. Ltd. & Ors, 2017 SCC OnLine Del 11076, submits that as in the present case, the respondent was admittedly working with the Delhi Police and there was no proof of any loss of salary suffered by the respondent due to the injury suffered by him. He submits that, therefore, the learned Tribunal has erred in awarding a sum of Rs.9,81,214/- taking the multiplier of 14 into account.

4. The learned counsel for the appellant further submits that the learned Tribunal has erred in awarding interest at the rate of 9% p.a. in favour of the respondent.

5. I find merit in the first challenge of the appellant to the Impugned Award. In **Raj Kumar** (supra), the Supreme Court has observed that where the claimant is working in government service, it has to be determined if the injury suffered by him would result in any loss of income; it is only where it is shown that due to the injury he has been shifted to a lower post with lesser emoluments, that a limited Award under the head of loss of future earning capacity, taking note of the reduced earning capacity, can be granted to the claimant.

6. In **Raj Kumar Malik** (supra), this Court laid emphasis on the fact that the government servant would retire/superannuate on attaining the age of 60 years and, therefore, due to the injuries suffered, may suffer loss of earning capacity post retirement. This Court has held that in such circumstances, the learned Tribunal should adopt a multiplier of 9. It was further held that in such circumstances, it would have to be kept in mind that the claimant would earn 50% of the last emoluments drawn as pension and thus, consequent functional disability will have to make up for the loss against the balance. I may



quote the relevant findings from the judgment, as under:

“5. In the case of Raj Kumar Malik (appellant in MAC Appeal No. 161/2011) it is noted that by evidence he had proved that his right upper limb below elbow had to be amputated. The tribunal while awarding compensation ignored the disability certificate (Ex.PW-5/13) issued by Guru Gobind Singh Govt. Hospital, New Delhi, confirming him to be permanently disabled to the extent of 74% in relation to the said upper limb. No compensation for loss of earning capacity in future has been awarded presumably because the claimant did not suffer any immediate loss of employment. The evidence would show that the appellant was a government servant employed in the Cabinet Secretariat of Govt. of India at a salary of Rs. 12,651/- per month on the date the accident occurred. The evidence would also show that he continued to be in service of the Government inspite of such physical handicap which is permanent in nature. But then, it has to be remembered that as a government servant he would superannuate on attaining the age of 60 years. Loss of earning capacity post retirement had to be considered by the award of compensation and for such purposes, the tribunal could adopt the multiplier of 9. In such calculation, however, it would also need to be kept in mind that the claimant would have earned 50% of the last emoluments drawn as pension and thus the consequent functional disability will have to make up for the loss against the balance.

6. Having regard to the above facts, the notional income after factoring in the element of future prospects of progressive rise in income is taken as $(12651 \times 150 \div 100)$ Rs. 18976.5, rounded off to Rs. 19,000/-. The pension to the extent of 50% would come to $(19000 \div 2)$ Rs. 9500/-. Having regard to the percentage of loss of earning capacity as indicated against the third entry in second part of the first schedule appended to Employees



Compensation Act, 1923, the functional disability is taken as 70%. Thus, the loss of earning capacity due to permanent disability is computed as $(9500 \times 70 \div 100 \times 12 \times 9)$ Rs. 7,18,200/-."

7. In view of the above, adoption of the multiplier of 14 by the learned Tribunal in the Impugned Award cannot be sustained. The Impugned Award is therefore set aside to this limited extent.

8. The compensation payable to the respondent/claimant shall be re-determined after taking into account the multiplier of 9, and further reducing the compensation payable by 50% as the respondent would earn pension on superannuation, on account of being a government servant.

9. On the question of awarded quantum of interest, I find no merit in the challenge. The date of the accident was 04.12.2013; the Award was passed on 05.08.2020. Keeping in view the same, the award of interest at the rate of 9% p.a. cannot be said to be unreasonable, so as to warrant any interference from this Court. Therefore, as far as the second challenge to the Impugned Award is concerned, the same is rejected.

10. As the Award stands modified and the compensation payable to the claimant is to be re-determined in accordance with the present order, the parties are directed to appear before the learned Tribunal on 25.08.2023 for the re-determination of the compensation payable to the respondent by the appellant.

11. The re-determined amount shall be released in favour of the respondent in accordance with the schedule prescribed under the



appellant with the learned Tribunal, the same shall be released in favour of the appellant alongwith the proportionate interest accrued thereon.

12. The appeal, alongwith the pending application is disposed of in the above terms.

NAVIN CHAWLA, J

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Click here to check corrigendum, if any

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