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

***Date of Decision: 17.08.2023***

+ **MAC.APP. 109/2016**

NATIONAL INSURANCE CO LTD ..... Appellant

Through: Mr.Manoj R.Sinha, Adv.

versus

DHANESHWAR SHARMA & ORS ..... Respondents

Through: Mr.S.N.Parashar, 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 05.10.2015 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accident Claims Tribunal-01, Dwarka Courts, New Delhi (hereinafter referred to as the 'Tribunal') in MACT no.219/10/11, titled *Sh.Dhaneswar Sharma v. Anish Ahmad & Others*.
2. By the Impugned Award, the learned Tribunal has awarded a sum of Rs.8,67,760/- in favour of the respondent no.1 herein, as compensation, along with interest @10% per annum with effect from 26.11.2010 till its realization.



**Duplicacy of Compensation under different heads:**

3. The learned counsel for the appellant submits that the learned Tribunal has erred in awarding compensation for same reason under multiple heads in favour of the respondent no.1. He submits that on one hand, the learned Tribunal has awarded a sum of Rs.70,728/- on the head of 'Loss of Income' in favour of the respondent no.1, in the same breath, has awarded a sum of Rs.1,00,480/- on account of 'Loss of Leaves'. He submits that the accident had occurred on 15.07.2010. The learned Tribunal has stated that keeping in view the medical record of the respondent no.1, who had suffered grievous injuries, he must have taken at least three months to get himself recovered from the said injuries and, therefore, awarded 'loss of income' calculated at his monthly income multiplied by three, equivalent to Rs.70,728/-. At the same time, the learned Tribunal has found that the respondent no.1 had remained on leave between 17.08.2010 to 22.12.2010, for a period of 128 days on medical ground. The learned Tribunal has therefore, awarded a sum of Rs.785/- x Rs.128/- = Rs.1,00,480/- towards the head of 'Loss of Leaves'. The learned counsel for the appellant submits that, therefore, there is duplicacy in the Award of compensation.
4. The learned counsel for the respondent no.1 could not seriously dispute the above submission made by the learned counsel for the appellant.



5. It appears from the Impugned Award itself that the respondent no.1 had remained on leave from 17.08.2010 to 22.12.2010 due to medical grounds. As the same has been awarded to the claimant on the head 'Loss of Leaves', the respondent no.1 could not have gained double benefit by getting the full salary for the period commencing from 17.08.2010 to 22.12.2010 under the head of 'Loss of Income'.
6. Accordingly, the Impugned Award in so far as it grants three months salary to the respondent no.1 on the head of 'Loss of Income' shall stand modified. The respondent no.1 shall be held entitled to only one month's salary under the head of 'Loss of Income'.

**Multiplier for determining 'Loss of Income':**

7. The next challenge of the learned counsel for the appellant to the Impugned Award is that the learned Tribunal has erred in adopting a multiplier of 15 for determining the 'Loss of Income' of the respondent no.1. He submits that on the date of the accident, the respondent no.1 would have been 40 years and 7 months old. He submits that, therefore, in terms of the judgment of the Supreme Court in *Sarla Verma v. DTC*, (2009) 6 SCC 121, a multiplier of 14 instead of multiplier of 15 should have been applied by the learned Tribunal.
8. I do not find any merit in the said challenge of the appellant to the Impugned Award.



9. This Court in ***Sheeba @ Shiva v. TATA AIG Gen. Ins. Co. Ltd. & Ors.*** NC:2023:DHC:5084 has considered this issue and observed as under:

“9. On the second issue, it is not disputed before this Court that the appellant was aged around 25 years and 8 months on the date of the accident.

10. In ***Shashikala and Ors. v. Gangalakshamma and Anr.***, 2015 ACJ 1239, relied upon by the learned counsel for the appellant, it has been held as under:

“17. Insofar as appropriate multiplier, the date of birth of the deceased as per driving licence was 16.6.1961. On the date of accident, i.e., 14.12.2006, the deceased was aged 45 years, 5 months and 28 days and the Tribunal has taken the age as 46 years. Since the deceased has completed only 45 years, the High Court has rightly taken the age of the deceased as 45 years and adopted multiplier of 14 which is the appropriate multiplier and the same is maintained. The total loss of dependency is calculated at Rs.16,82,310 (Rs.1,20,165 x 14).”

11. In ***Navin Parcha & Ors. v. Deepak Kumar & Ors.***, Neutral Citation No-2019:DHC:4441, this Court has also held that where the deceased had not attained the age of 31 years, which is a next slab, the multiplier applicable to the previous slab would be applied.

12. Though in ***Bajaj Allianz General Insurance Co. Ltd. v. Meenakshi & Ors.***, Neutral Citation No-2012:DHC:3735, relied upon by the learned counsel for the respondent no.1, it has been held that to apply the judgment of ***Sarla Dixit v. Balwant Yadav*** (1996) 3 SCC 179, purposely, the multiplier has to be taken as per the age which is nearer to the birth on the date of the accident, in view of the subsequent judgment in ***Shashikala***



(supra), I am bound by the judgment of the Supreme Court.

13. Taking into account, the multiplier as prescribed in **Sarla Dixit** (supra), and taking the age of the appellant as 25 years for purposes of the multiplier slab stipulated therein, it is held that the multiplier to be adopted was 18, which is applicable to the age group of 21-25, and the learned Tribunal has erred in adopting the multiplier of 17 for determining compensation. The Impugned Award is modified to the above limited extent.”

10. Therefore, it is the completed year of age that is to be taken into account for determining the multiplier in terms of the judgment in **Sarla Verma** (supra) as is applicable to the facts of the present case.
11. The challenge of the appellant on this account is, therefore, rejected.

**Future Prospects:**

12. The next challenge of the appellant to the Impugned Award is on account of the learned Tribunal granting future prospects of income to the respondent no.1 at 50%.
13. The learned counsel for the appellant, placing reliance on the judgment of the Supreme Court in **National Insurance Co. Ltd. v. Pranay Sethi & Ors.**, (2017) 16 SCC 680, submits that the Supreme Court has held that where the deceased/injured was between the age of 40 to 50 years, addition of only 30% is to be made for the



purposes of computation of the loss of future prospects to the income.

14. I find merit in the submission made by the learned counsel for the appellant.
15. In ***Pranay Sethi*** (supra), the Hon'ble Supreme Court has observed as under:

*“59.3 While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.”*

16. A reading of the above would show that unlike in case of a multiplier table as stipulated in ***Sarla Verma*** (supra), in the case of addition for future prospects, the Supreme Court has prescribed slabs which are continuous and without a gap. In the present case, the slab that would be applicable is the one where the age of the deceased/injured is between 40 to 50 years. The respondent no.1 having already crossed the age of 40 years would fall within this slab and, therefore, future prospects at only 30% should have been adopted by the learned Tribunal.
17. The impugned Award, in so far as it grants compensation taking future prospects as 50% is set aside. Instead, the respondent no. 1 is



held entitled to compensation taking the future prospects of increase in his income at the rate of 30%. The amount of compensation be reworked accordingly.

**Deduction of Income Tax:**

18. The next challenge of the appellant to the Impugned Award is that the learned Tribunal has erred in not deducting the income tax that would be payable by the respondent no.1 on his salary while determining the loss of income.
19. The learned counsel for the respondent no.1, while not disputing the above proposition, submits that the learned Tribunal has, in fact, taken only the net salary of the respondent no.1 into account. He submits that, therefore, the learned Tribunal has balanced the deduction of income tax.
20. I find that the Impugned Award does not reflect any such adjustment/deduction of the income tax by the learned Tribunal. At the same time, I find merit in the submission of the learned counsel for the respondent no.1 that for determining the monthly income of the respondent no.1, his gross salary should have been taken into account by the learned Tribunal.
21. Accordingly, the Impugned Award on the compensation awarded to the respondent no. 1 towards “loss of income” is set aside. The matter is remanded back to the learned Tribunal to rework the compensation payable to the respondent no. 1 towards “loss of income” by taking the Gross Salary and by deducting the Income



Tax payable therefrom, in terms of the judgment in *Pranay Sethi* (supra).

**Interest:**

22. The last challenge of the appellant to the Impugned Award is on the rate of interest awarded by the learned Tribunal. The learned counsel for the appellant submits that interest @10% per annum awarded by the Impugned Award is exorbitant.
23. To a query put to the learned counsel for the appellant as to whether the rate of interest on fixed deposits that was prevalent as on the date of the accident or as on the date of the Award, has been placed on record, the learned counsel for the appellant fairly submits that the same has not been placed on record.
24. In the present case, the accident had taken place on 15.07.2010; the Impugned Award has been passed on 05.10.2015. The appellant has not placed on record any material by which it can be said that the rate of interest awarded by the learned Tribunal was exorbitant or not reasonable.
25. In view of the above and in the facts and circumstances of the present appeal, the challenge of the appellant to the rate of interest must fail.

**CONCLUSION:**

26. In view of the above, the Impugned Award cannot sustain and is, accordingly, set aside. The Claim Petition is remanded to the learned Tribunal limited only to the fresh computation of compensation payable to the respondent no.1, after considering the modifications made by this order, and to release the compensation amount



deposited by the appellant with the learned Tribunal pursuant to the order dated 03.02.2016 of this Court amongst the appellant and the respondent no. 1, accordingly.

27. The appellant and the respondent no.1 shall appear before the learned Tribunal on 21<sup>st</sup> September 2023.
28. The present appeal is allowed in the above terms. There shall be no order as to costs.
29. The statutory amount deposited by the appellant shall be released in favour of the appellant along with interest accrued thereon.

**NAVIN CHAWLA, J**

**AUGUST 17, 2023**  
**RN/AS**

