



2023:DHC:7374



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 09.10.2023***+ **MAC.APP. 227/2020****UMESH SHAH**

..... Appellant

Through: Mr.Kishan Singh Chauhan,  
Adv.

versus

**BAJAJ ALLIANZ GENERAL INSURANCE COMPANY  
LIMITED**

..... Respondent

Through: Mr.Suhail Malik and Mr.Danish  
Aftab Chowdhury, Advs. for R-  
1.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This appeal has been filed by the appellant challenging the Award dated 08.07.2020 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, Patiala House Court, Delhi (hereinafter referred to as the 'Tribunal') in MACT Case No.293/2017, titled *Umesh Shah v. Laxmi Kant Yadav & Ors.*

2. It was the case of the appellant before the learned Tribunal that on 10.06.2017 at about 11:30 p.m., when the claimant was coming from the side of Punjabi Bagh by a bus after finishing his work and as the bus reached the Delhi Zoo,

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Mathura Road stand, the bus driver asked all the passengers to get down from the bus as the bus had to refuel CNG. The passengers accordingly got down from the bus and the bus took a U-turn from ITO. While the claimant was crossing the road in order to reach the other side of the road, a TSR/Auto Rickshaw bearing registration no. DL-1RL-1600 (hereinafter referred to as the 'Offending Vehicle') being driven at a very high speed from Sher Shah road side suddenly came and hit the claimant, due to which the claimant suffered severe head injury.

3. After the accident, he was taken to AIIMS Trauma Centre, where he remained hospitalized from 10.06.2017 to 22.06.2017 and from 28.08.2017 to 03.09.2017. He had to undergo head surgery and his diagnosis revealed right frontotemporal SDH with temporal contusion. He was subjected to a surgical procedure called right sided FTP de-compressive craniotomy with lax duroplasty during the course of his hospitalization. He was subjected another surgical procedure called cranioplasty. In the first surgery, his bone flap was removed and kept in abdominal cavity and in the second surgery, the bone flap was taken out of abdominal cavity and was placed in right orientation and secured with mini plates and screws.

4. PW-2, Dr.Ajay Choudhary, Chairperson of the Medical Board of Dr. Ram Manohar Lohiya Hospital, who had examined the claimant for the determination of his permanent disability, deposed that the case of the claimant was of post

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head injury sequel with left hemiparesis with cognitive impairment and his permanent physical disability was assessed at 87% with relation to his whole body. The witness further stated that due to the disability suffered, the claimant's left hand has become almost non-functional and though his right hand is functioning to some extent, he would not be able to even do his day to day activities on his own. It was further stated that he will require assistance of some attendant or a member of his family throughout his life. His understanding and ability to do some tasks stood affected comprehensively and thus, it will be very difficult for the injured to do any job to earn his livelihood.

**Mental and Physical Shock, Pain and Suffering and Loss of Amenities**

5. The learned counsel for the appellant challenges the Impugned Award inasmuch as it awards only a sum of Rs.2,50,000/- to the claimant towards Mental and Physical Shock, Pain and Suffering and Loss of Amenities. Placing reliance on the judgment of the Supreme Court in ***Master Mallikarjun v. Divisional Manager, the National Insurance Company Ltd. & Anr.*** (2014) 14 SCC 396, he submits that as the functional disability of the claimant was diagnosed at 100%, an amount of Rs.6 lacs should have been awarded to the claimant on account of Pain and Suffering, Mental and Physical Shock, hardship, inconvenience etc.

6. I find merit in the submission made by the learned



counsel for the appellant.

7. In ***Master Mallikarjun*** (supra), the Supreme Court has held as under:

*“12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc. should be, if the disability is above 10% and up to 30% to the whole body, Rs 3 lakhs; up to 60%, Rs 4 lakhs; up to 90%, Rs 5 lakhs and above 90%, it should be Rs 6 lakhs. For permanent disability up to 10%, it should be Rs 1 lakh, unless there are exceptional circumstances to take a different yardstick.*

*(Emphasis supplied)*

8. Keeping in view the above, the learned Tribunal has erred in awarding only Rs.2,50,000/- to the claimant towards Mental and Physical Shock, Pain and Suffering and Loss of Amenities. The same shall stand enhanced to Rs.6 lacs.

**Conveyance charges and Special Diet**

9. The next challenge of the appellant to the Impugned Award is on account of only Rs.20,000/- being awarded in favour of the appellant towards Conveyance charges, and only Rs.30,000/- being awarded towards the Special Diet.

10. I find merit in the challenge. Taking into account the nature of the injury suffered by the appellant and the fact that the effect of such injury shall continue throughout the life of the



appellant, the compensation awarded by the learned Tribunal is highly unreasonable. The same shall stand enhanced to Rs.2,50,000/- towards Special Diet and Conveyance charges.

### **Attendant Charges**

11. The appellant further challenges the award of Rs.5 lacs granted in favour of the appellant towards attendant charges.

12. The learned counsel for the appellant, placing reliance on the judgement of the Supreme Court in ***Kajal v. Jagdish Chand & Ors.*** (2020) 4 SCC 413, submits that the attendant charges for at least two attendants on minimum wages should have been awarded in favour of the appellant.

13. I am unable to agree with the submission made by the learned counsel for the appellant. In ***Kajal*** (supra), it was a case of a young bright girl who due to the accident had suffered severe damage in her brain. While in the case at hand, the appellant was aged about 43 years at the time of the accident and was working as a helper with a private firm. As he could not prove his income, the learned Tribunal has assessed the income of the appellant on the basis the minimum wages for an un-skilled worker as notified by the Government of NCT of Delhi at the relevant time of the accident. In the given factual scenario, it is highly improbable that the appellant would take services of two attendants for looking after his daily needs. The judgment of the Supreme Court in ***Kajal*** (Supra) has been distinguished in ***Rajendra Singh & Ors. v. National Insurance***



*Company Limited & Ors.*, (2020) 7 SCC 256 pointing out that the same had *inter alia* dealt with a case where the victim was a 12 years old child.

14. At the same time, the appellant would certainly require assistance of his family members for discharging his daily chores. Keeping in view of the overall circumstances, while the appellant cannot be granted the compensation towards attendant charges based on two attendants, certainly the amount awarded by the learned Tribunal on the above head is unreasonably low. Even in a case where a family member has to permanently look after the appellant, the compensation in this regard has to be reasonable and adequate. Accordingly, the same shall stand enhanced to Rs.12 lacs.

### **Future Medical Treatment**

15. The learned counsel for the appellant further submits that the learned Tribunal has also erred in not granting any compensation towards future medical treatment. He submits that keeping in view the nature of the injury suffered, the appellant would require medical care in future as well.

16. I find merit in the submission made.

17. In *Kajal* (supra), the Supreme Court while considering the claim of compensation towards future medical treatment has observed as under:

***“Future medical treatment***

*29. The claimant has been awarded only Rs*



*2,00,000 under this head. This amount is a pittance. Keeping in view the nature of her injuries and the fact that she is bedridden this child is bound to suffer from a lot of medical problems. True it is that there is no evidence in this regard but there can hardly be such evidence. She may require special mattress which will have to be changed frequently. In future as this girl grows, she may face many other medical issues because of the injuries suffered in the accident. Keeping in view her young age and assuming she would live another 50 to 60 years, it would not be unjust to award her Rs 5,00,000 for future medical expenses.”*

18. Keeping in view the above judgment and the age of the appellant, an amount of Rs.2,50,000/- is found reasonable to be awarded to the claimant/appellant towards future medical treatment.

**Final Directions**

19. The Award shall stand modified to the above extent.
20. The respondent no.1 shall deposit the enhanced amount along with interest, as was awarded by the learned Tribunal, with the learned Tribunal within a period of eight weeks from today.
21. The appeal is allowed in the above terms. There shall be no order as to costs.

**NAVIN CHAWLA, J**

**OCTOBER 9, 2023/Arya/am**