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

*Date of decision:***18.09.2023**

+ MAC.APP. 433/2023
NEW INDIA ASSURANCE CO LTD Appellant
Through: Ms.Sakshi Gupta, Adv.

versus

SANJAY BARI & ANR. Respondents
Through: Nemo

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CM APPL. 47979-80/2023 (Exemption)

1. Allowed, subject to all just exceptions.

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2. By the present appeal the appellant challenges the Award dated 02.06.2023 (hereinafter referred to the 'Impugned Award') passed by the learned District Judge (Commercial Court)-02 North-West District, Rohini Courts, Delhi (hereinafter referred to as the 'Tribunal') in MAC Petition No.125/2019, titled ***Sh.Sanjay Bari v. Sh.Hari Shankar Gupta & Anr.***

3. The limited challenge of the appellant to the Impugned Award is on the 'Attendant Charges' awarded in favour of the respondent no.1 herein, and also on the penal interest awarded against the appellant in case the appellant fails to deposit the compensation

Signature Not Verified awarded by the Impugned Award within a period of 30 days

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from the date of the Impugned Award.

ATTENDANT CHARGES

4. On the issue of the attendant charges, the learned counsel for the appellant has placed reliance on the testimony of the Dr.Ashutosh Gupta, Specialist Orthopedic, SRHC Hospital (PW2), who stated that due to the disability sustained by the injured, he would have moderate difficulty in walking on plain surface, walking on slope, climbing stairs, kneeling and in taking turns. He would also have severe difficulty in standing on both legs and difficulty in performing his day to day activities which involves movement from one place to another. He also stated that the patient being a labour would have difficulty in performing his job.

5. The learned counsel for the appellant submits that keeping the above in consideration, the learned Tribunal has erred in awarding the compensation in favour of the respondent no.1 towards attendant charges, calculating the same on basis of minimum wages of a unskilled worker. She submits that the respondent no. 1 would not require an attendant.

6. I have considered the above challenge of the appellant, however, find no merit in the same.

7. PW2 in his statement has stated as under:

“Due to the aforesaid disability sustained by the injured, he would have moderate difficulty in walking on plain surface, walking on slope, climbing stairs, kneeling and in taking turns. He would also have severe difficulty in standing on both legs. He would have mild difficulty in cross-leg sitting. The aforesaid patient would have difficulty in his performing his day to day activities which Involves movement from one place to another place.



The aforesaid patient being a labour would have difficulty in performing his job.”

8. From the above description, it is evident that the respondent no.1 would require assistance in performing his day to day functions. Though, PW2 has stated that the respondent no.1 would have moderate difficulty in walking on plain surface, walking on slope, climbing stairs, kneeling and in taking turns, he would have severe difficulty in standing on both legs; he would have mild difficulty in cross-leg sitting. The respondent no. 1 has suffered 74% permanent disability in relation to his both lower limbs. In fact, the learned Tribunal has assessed his Functional Disability as 100% to the whole body. With the above nature of difficulties that the respondent no.1 is suffering, no fault can be found in the learned Tribunal coming to the conclusion that the respondent no. 1 would be entitled to compensation for at least one attendant.

9. Even though, looking into the status of the respondent no. 1, it may be presumed that he would not be hiring the services of an attendant, but may be relying upon the family members to help him in his day to day functions, it would not be lawful to not compensate the respondent no. 1 for the services rendered by the family members. Reference in this regard may be made to the judgment of the Supreme Court in **Kajal v. Jagdish Chand**, (2020) 4 SCC 413, wherein it has further been held that the most ‘just’ manner of determining the compensation payable for an attendant would be the multiplier method. This was followed in **Abhimanyu Partap Singh v. Namita Sekhon**, (2022) 8 SCC 489, as well.

10. Keeping in view of the above, I find no merit in the challenge to



the award of compensation on the head of ‘Attendant Charges’. The same is accordingly rejected.

PENAL INTEREST

11. As far as the penal interest is concerned, the learned counsel for the appellant has placed reliance on the judgment of the Supreme Court in ***National Insurance Co. Ltd. v. Keshav Bahadur & Ors.***, (2004) 2 SCC 370, wherein it has been held as under:

“13. Though Section 110-CC of the Act (corresponding to Section 171 of the new Act) confers a discretion on the Tribunal to award interest, the same is meant to be exercised in cases where the claimant can claim the same as a matter of right. In the above background, it is to be judged whether a stipulation for higher rate of interest in case of default can be imposed by the Tribunal. Once the discretion has been exercised by the Tribunal to award simple interest on the amount of compensation to be awarded at a particular rate and from a particular date, there is no scope for retrospective enhancement for default in payment of compensation. No express or implied power in this regard can be culled out from Section 110-CC of the Act or Section 171 of the new Act. Such a direction in the award for retrospective enhancement of interest for default in payment of the compensation together with interest payable thereon virtually amounts to imposition of penalty which is not statutorily envisaged and prescribed. It is, therefore directed that the rate of interest as awarded by the High Court shall alone be applicable till payment, without the stipulation for higher rate of interest being enforced, in the manner directed by the Tribunal.”

12. In the present case, the learned Tribunal, by the Impugned Award, has awarded compensation of Rs.56,63,000/- in favour of the

Respondent no.1, alongwith interest at the rate of 7% per annum with



effect from the date of the filing of the claim petition, that is, 05.03.2019, till the date of its realization. However, while fastening the liability on the appellant, the learned Tribunal has further directed that in case the appellant fails to deposit the awarded sum within 30 days of the Impugned Order, the appellant shall be liable to pay interest at the rate of 9% per annum for the said delay.

13. As the appeal has been dismissed, it is directed that the appellant shall deposit the awarded sum along with interest at the rate of 7% from the date of filing of the claim petition till the date of the deposit with the learned Tribunal, within a period of six weeks.

14. The appeal and the application are disposed of in the above terms.

NAVIN CHAWLA, J

SEPTEMBER 18, 2023/Arya/ss

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