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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 18.09.2023

+ MAC.APP. 434/2023

ICICI LOMBARD GENERAL INSURANCE CO. LTD.

..... Appellant

Through: Mr. Ved Vyas Tripathi,
 Advocate.

versus

MUNISH BHALLA @ MONTI KUMAR

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CM APPL. 48142/2023 (Exemption)

1. Allowed, subject to all just exceptions.

CM APPL. 48143/2023

2. For the reasons stated in the application, the delay of 11 days in filing the appeal stands condoned.

3. The application stands disposed of.

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4. This appeal has been filed by the appellant challenging the Award dated 02nd May, 2023 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, Patiala House, New Delhi (hereinafter referred to as the 'Tribunal') in MACP No. 243/2018, titled as *Sh. Munish Bhalla @ Monti Kumar vs. Sh. Om Pal Singh & Anr.*

5. The appellant challenges the impugned award, firstly, on account of the compensation being awarded to the respondent no.1 by



treating his functional disability to the whole body as 50%.

6. The learned counsel for the appellant submits that as per the Disability Certificate dated 06th February, 2017 (Ex.PW-2/1) issued by Dr. RML Hospital, the respondent no.1 had suffered head injury in the accident resulting in permanent disability of 50% in view of intellectual function impairment with an IQ of 60. He submits that in fact, the respondent no.1 himself appeared as a witness in support of the Claim Petition and his testimony has been relied upon by the learned Tribunal for the finding that the accident had taken place due to the offending vehicle, that is an auto rickshaw, which was being driven by the respondent no.2 herein, in a rash and negligent manner. The learned counsel for the appellant submits that, as the injury is only with respect to the intellectual impairment, the learned Tribunal has erred in assessing the functional disability of the whole body as 50%.

7. I am unable to accept the submission made by the learned counsel for the appellant.

8. In assessing the functional disability of the respondent no.1, the learned Tribunal has considered the statement of Dr. Manish K. Kandpal, Associate Prof., Department of Psychiatry, Dr. RML Hospital, who had appeared as PW-2 and proved the Disability Certificate as Ex.PW-2/1. In his statement, he stated that the respondent no.1 would require assistance for his day to day functioning and is not fit for any type of skilled job. He further deposed that person having IQ below 70 is considered to be abnormal, having a case of mental retardation. He stated that the respondent no.1 would find difficulty in memory, performance ability, and



comprehension (verbal ability). He further stated that there is no medication required by a person having IQ level of 60, nor any surgical intervention is required; the patient requires only rehabilitation for his maximum recovery in such kind of cases. He stated that the respondent no.1 cannot do any kind of major jobs which requires skills; and that he requires constant assistance and supervision for his day to day activities.

9. Keeping in view the above testimony of the PW-2, the learned Tribunal has rightly assessed the functional disability of the petitioner as 50% in relation to whole body. In such assessment, the learned Tribunal has also been alive to the fact that the respondent no.1 appeared as a witness before the learned Tribunal.

10. I do not find any reason to disagree with the above assessment.

11. The second challenge of the appellant to the impugned award is on the attendant charges being awarded in his favour.

12. For the attendant charges, PW-2 has clearly stated that the respondent no.1 would require constant assistance and supervision for his day to day activities. In that view, award of compensation of Rs.10,00,000/- towards attendant charges cannot be said to be unreasonable, especially keeping in view the minimum wages notified by NCT of Delhi for an unskilled worker.

13. The third challenge of the appellant to the impugned award is to the compensation of Rs.1,00,000/- towards special diet awarded in favour of the respondent no.1. The learned counsel for the appellant submits that the respondent no.1 had not led any evidence in support of his above claim.



14. I do not find any merit in the said contention.

15. The respondent no.1 had sustained grievous injuries as a result of the accident. He was admitted in the hospital on 23rd October, 2014 and was discharged on 2nd November, 2014. As noted hereinabove, he has suffered 50% disability towards his whole body. The amount of Rs.1,00,000/- awarded on account of special diet, therefore, cannot be said to be unreasonable and does not warrant any interference from this Court. The challenge is, accordingly, rejected.

16. The present appeal is accordingly dismissed.

17. I must, however, clarify that as the present appeal is being rejected *in limine* and without issuing notice to the respondent no. 1, this order shall not bind the respondent no. 1 in case the respondent no. 1 is to challenge the Impugned Award.

18. The learned Tribunal by the Impugned Award has awarded compensation of Rs.43,85,728/- in favour of the respondent no.1 alongwith interest at the rate of 7.5% per annum with effect from the date of the filing of the claim petition, that is, 07.09.2015, 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 Award, the appellant shall be liable to pay interest at the rate of 9% per annum for the said period of delay.

19. In ***National Insurance Co. Ltd. v. Keshav Bahadur & Ors.***, (2004) 2 SCC 370, the Supreme Court has 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.”

20. As the appeal has been dismissed, it is directed that the appellant shall deposit the awarded sum alongwith interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of deposit with the learned Tribunal within a period of six weeks.

21. As the appeal has been dismissed without issuance of notice to the respondents, the appellant is exempted from depositing the statutory amount.

NAVIN CHAWLA, J

SEPTEMBER 18, 2023/ns/am

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 25.09.2023

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