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

Date of decision: 16.10.2023

+ **MAC.APP. 480/2023**

THE ORIENTAL INSURANCE COMPANY LTD Appellant

Through: Mr.JPN Shahi, Adv. (through VC)

versus

MS PINKI AND ORS Respondents

Through: Mr.S.N. Parashar, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CM APPL. 53801/2023 (Exemption)

1. Allowed, subject to all just exceptions.

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2. This appeal has been filed challenging the Award dated 03.08.2023 (hereinafter referred to as 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, North West, Rohini Courts, Delhi (hereinafter referred to as 'Tribunal') in MACT Case No.293/2019 titled as *Ms. Pinki v. Sh. Sudhir Kumar & Ors.*

3. The above Claim Petition was filed by the respondent no.1 herein seeking compensation for the permanent disability suffered by her as a result





of the motor vehicular accident which took place on 21.12.2018. As a result of the accident, the respondent no.1 suffered above knee amputation of right side and had locomotor disability of 85% in relation to her right lower limb.

Challenge to amount awarded on account of Cost of Prosthetic Limb

4. The appellant challenges the Impugned Award on the compensation awarded to the respondent no.1 towards cost of the prosthetic limb. The learned counsel for the appellant submits that the same is highly exorbitant and cannot be sustained.

5. I find no merit in the contention raised by the learned counsel for the appellant.

6. The learned Tribunal while awarding the compensation of Rs.41,99,055/-in favour of the respondent no.1 towards cost of the prosthetic limb, has observed as under:

“32. It is apparent from the above discussion that the petitioner had to undergo amputation of her right lower limb. This hardship requires remedial steps (i.e. use of prosthesis) for restoring normal movement of the injured. In this regard, the petitioner has examined PW-3 SH. Anshul Sengar, who is a Prosthetist and Orthotist. PW-3 proved a quotation dated 18.01.2021 Ex.PW3/1 for a sum of Rs. 5,99,086/- issued in favour of the petitioner for : Ottobock Modular Transfemoral Prosthesis with 3R60 EBS Knee Joint. Dual Hydraulic. Dynamic Motion Foot. Carbonfiber Laminated Socket with Liner. Foam Cover. Cosmetics Stockings. It is mentioned in the covering letter that average life of artificial leg is 6 years approximately. The said facts have not been rebutted by either of the respondents. Keeping in view the average life expectancy of about 70 years for Indian Females, the petitioner is





*entitled to be granted compensation for purchase of prosthesis and its replacement in future. As per Aadhar card and education certificates the age of petitioner was 30 years at the time of accident. As per the statement of PW-3, the average life of prosthesis is 6 years. As such it could be safely inferred that the petitioner was required to purchase a prosthesis immediately after the accident and to replace it at least 07 times during her life time. Accordingly, the petitioner has to be granted compensation for the purchase and replacement of prosthesis on said 07 occasions. In the facts and circumstances, the petitioner is held entitled to a sum of **Rs.41,99,055/- (Rs. 5,99,865/- X 7)** in this regard and the same is granted to her as compensation under this head.”*

7. As far as the cost of prosthetic limb is concerned, the respondent no.1 had produced before the learned Tribunal Mr.Anshul Sengar, Prosthetist and Orthotist, who deposed the price of a prosthetic limb as Rs.5,99,086/-. He further deposed that the average life of the prosthesis is 6 years. There was no contrary evidence led by the appellant before the learned Tribunal on the cost of the prosthetic limb that would be suitable for the respondent no. 1.

8. The learned Tribunal has rightly taken the average expectancy to be around 70 years and, awarded compensation taking the cost of prosthetic limb for purposes of replacement of at least seven times. The above methodology has been approved by the Supreme Court in ***Mohd. Sabeer alias Shabir Hussain v. Regional Manager, U.P. State Road Transport Corporation***, 2022 SCC OnLine SC 1701, observing as under:

*“COMPENSATION FOR THE PURCHASE
AND MAINTENANCE OF THE
PROSTHETIC LEG
22.The High Court has awarded a*





compensation of Rs.5,20,000/- for the prosthetic limb and Rs.50,000/- towards repair and maintenance of the same. The Appellant submits that the cost of the prosthetic limb itself is Rs. 2,60,000/- and the life of the prosthetic limb is only 5-6 years. The prosthetic limb also requires repair and maintenance after every 6 months to 1 year, and each repair costs between Rs.15,000 to Rs.20,000/-. This would mean that the prosthetic limb would last the Appellant for only 15 years under the current compensation. The Appellant at the time of the accident was aged 37 years and has a full life ahead. It has been clearly stated by this Court in the case of Anant Son of Sidheshwar Dukre (Supra) that the purpose of fair compensation is to restore the injured to the position he was in prior to the accident as best as possible. The relevant paragraph of the judgment is being extracted herein:

“In cases of motor accidents leading to injuries and disablements, it is a well settled principle that a person must not only be compensated for his physical injury, but also for the non-pecuniary losses which he has suffered due to the injury. The Claimant is entitled to be compensated for his inability to lead a full life and enjoy those things and amenities which he would have enjoyed, but for the injuries.” “The purpose of compensation under the Motor Vehicles Act is to fully and adequately restore the aggrieved to the position prior to the accident.”

23. As per the current compensation given for the prosthetic limb and its maintenance, it would last the Appellant for only 15 years, even if we were to assume that the limb would not need to be replaced after a few years. The Appellant was only 37 years at the time of the accident, and it would be reasonable to assume that he would live till he is 70 years old if not more. We are of the opinion that the

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Appellant must be compensated so that he is able to purchase three prosthetic limbs in his lifetime and is able to maintain the same at least till he has reached 70 years of age. For the Prosthetic limbs alone, the Appellant is to be awarded compensation of Rs. 7,80,000 and for maintenance of the same he is to be awarded an additional Rs. 5,00,000/-."

(Emphasis supplied)

9. In view of the above, no fault can be found in the Impugned Award as far as it determines the compensation payable to the respondent no.1 towards cost of Prosthetic limb as Rs.41,99,055/-.

Challenge to interest awarded on the amount awarded for Prosthesis

10. The appellant further challenges the award of interest on the above amount of compensation, claiming that as the amount is yet to be spent by the respondent no.1 for procuring the prosthetic limb, interest on the same could not have been awarded by the learned Tribunal.

11. The learned counsel for the respondent no.1, who appears on advance notice, does not join issue on the above challenge of the appellant.

12. Accordingly, it is directed that the compensation amount of Rs. 41,99,055/- shall not carry interest, provided the same is deposited with the learned Tribunal within a period of eight weeks from today. In case, it is not so deposited, it shall carry interest at the rate of 7.5% per annum from the date of the impugned Award till its actual deposit with the learned Tribunal.

Challenge to the Rate of Interest

13. The next challenge of the appellant to the Impugned Award is on the rate of interest awarded by the learned Tribunal on the compensation. The learned counsel for the appellant submits that the learned Tribunal has erred





in awarding interest at the rate of 9% per annum in favour of the respondent no.1. He submits that taking into account the prevalent rate of interest at that time, it should not have been more than 7.5% per annum. In support of his submission, he places reliance upon the judgment of this Court in *National Insurance Co. Ltd. v. Yad Ram and Others*, 2023 SCC OnLine Del 1849.

14. The learned counsel for the respondent no.1, in order to ensure that the amount is paid without delay, submits that he has no objection if the rate of interest is reduced to 7.5% per annum.

15. Accordingly, it is directed that the entire compensation amount, except for the compensation granted on account of the cost of the prosthetic limb, shall carry interest at the rate of 7.5% per annum from the date of filing of the Claim Petition, that is 17.05.2019 till the actual payment thereof.

16. No other challenge to the Impugned Award is made by the appellant.

17. The appeal is disposed of in the above terms. The application also stands disposed of.

18. As the appeal has been decided at the preliminary stage, the appellant is exempted from depositing the statutory amount for the appeal.

NAVIN CHAWLA, J

OCTOBER 16, 2023/ns/am

