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

Date of decision: 05.10.2023

\+ **MAC.APP. 30/2020 & CM APPL. 2794/2020**

UNITED INDIA INSURANCE CO LTD ..... Appellant

Through: Mr.Pankaj Seth & Mr.Yuvraj Sharma, Advs.

versus

MUNESH KUMAR & ORS ..... Respondents

Through: Mr.Manu Luv Shahalia, Adv. for R-1.
Ms.Aditi Gupta, Adv. for R-2 & R-3.

\+ **MAC.APP. 346/2021**

MUNESH KUMAR ..... Appellant

Through: Mr.Manu Luv Shahalia, Adv.

versus

UNITED INDIA INSURANCE CO LTD AND ORS ..... Respondents

Through: Mr.Pankaj Seth & Mr.Yuvraj Sharma, Advs. for R-1.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. These appeals have been filed challenging the Award dated 28.08.2019 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, South District, Saket Courts, New Delhi (hereinafter

referred to as the 'Tribunal') in Petition No. 08/2019, titled ***Munesh Kumar v. Rajeev Sharma and Ors.***

CHALLENGE OF THE INSURANCE COMPANY

2. As far as the Insurance Company is concerned, it challenges the Impugned Award on the quantum of the compensation awarded in favour of the claimant towards the cost and maintenance of a prosthetic limb.

3. The learned counsel for the Insurance Company submits that the cost of the prosthetic limb as recommended by the Committee of Doctors at Safdarjung Hospital (hereinafter referred to as 'Committee'), was only Rs.2,75,000/-. The Committee had also recommended that a Silicone Liner, that needs to be changed every year for a period of four years, costs Rs.29,943/-. It was also established on record that the claimant was 43 years of age at the time of the accident. The learned counsel for the Insurance Company submits that the learned Tribunal has, therefore, erred in awarding a sum of Rs.21,76,632/- towards procurement and maintenance of the prosthetic limbs, while observing that the claimant would live till the age of 75 years and would, therefore, require at least 6 prosthetic limbs. The learned counsel for the Insurance company submits that even taking the multiplier as stipulated by the Supreme Court in the judgment of ***Sarla Verma (Smt) and Others v. Delhi Transport Corporation and Another***, (2009) 6 SCC 121, the learned Tribunal has erred in awarding the above amount in favour of the claimant.

4. The learned counsel for the Insurance Company further submits that, in any case, as the compensation towards procurement and maintenance of the prosthetic limb is for the future, interest could not have been awarded on the said amount from the date of filing of the Detailed Accident Report (in short 'DAR') till its realisation.

5. The learned counsel for the Insurance Company further submits that the learned Tribunal has taken the functional disability of the claimant towards the whole body as 60%. He submits that if the claimant is awarded compensation for procuring a prosthetic limb, the same deserves to be reduced, as with the prosthetic limb, the claimant would be able to perform more functions and earn a livelihood for himself.

6. The learned counsel for the Insurance Company further submits that as the loss of future income has been granted to the claimant, the learned Tribunal should not have awarded loss of income in favour of the claimant for the period of medical treatment.

7. On the other hand, the learned counsel for the claimant submits that the learned Tribunal has rightly awarded a sum of Rs.21,76,632/- towards the cost of the prosthetic limb and for its maintenance, keeping in view that the prosthetic limb has a life of only 5 years and moreover requires an expenditure of Rs.21,943/- on account of the Silicone Liner which needs to be replaced every year. He submits that the learned Tribunal has

rightly considered the above amount for a life expectancy of 75 years of the claimant.

8. On the question of award of interest on this amount, the learned counsel for the claimant does not dispute the submission of the learned counsel for the Insurance Company and submits that the claimant will not seek interest over the above amount.

9. On the question of functional disability, the learned counsel for the claimant submits that the claimant was working as a sweeper at the time of the accident. He submits that even with a prosthetic limb, he would not be able to perform his work, therefore, the learned Tribunal has rightly assessed the functional disability of the claimant as 60%.

10. As far as the award of compensation towards loss of income is concerned, the learned counsel for the claimant again does not dispute that once the Tribunal has granted loss of future income in favour of the claimant, compensation on the above head could not have been granted.

<u>CHALLENGE OF THE CLAIMANT</u>

11. The claimant is also aggrieved of the Impugned Award inasmuch as the learned Tribunal has failed to take into consideration the future prospects in increase of income of the claimant while awarding compensation towards loss of future income.

12. The learned counsel for the claimant further submits that the learned Tribunal has also erred in taking the income of the

claimant as only Rs.12,000/- though the claimant was receiving a salary of Rs.15,000/- per month out of which Rs.12,000/- per month was being deposited in his bank account by his employer while Rs.3000/- per month was being paid in cash. He submits that even if the same is to be disbelieved, at least the minimum wages for an unskilled worker as notified by the Government of NCT of Delhi as on the date of the accident, should have been taken into consideration for determining the income of the claimant.

13. On the above challenge of the claimant, while the learned counsel for the Insurance Company does not dispute the claim of the claimant towards future prospects, He submits that the income of the claimant has been rightly determined as Rs.12,000/- per month based on the evidence adduced by the claimant before the learned Tribunal.

ANALYSIS AND FINDINGS

14. I have considered the submissions made by the learned counsels for the parties.

Prosthetic Limb:

15. As far as compensation awarded towards the prosthetic limb, the learned Tribunal in its Impugned Award has observed as under:-

> *"14. The petitioner was referred to the Committee of doctors at Safdarjung Hospital as formed on the orders of Hon'ble High Court of Delhi. The committee examined the*

petitioner and gave its report. The report states that the petitioner appeared before the committee for the prosthesis evaluation on 27.07.2019. As per CMS functional level classification the petitioner falls in K-1 category. It further states that the petitioner may be reimbursed the cost of prosthesis as mentioned on the page number 6 and 7 of the price list (Trans Femoral Prosthesis) proposed by the committee.

After considering the prices of different companies, the committee has recommended reimbursement for Rs.2,75,000/- for prosthesis with Silicone Liner and Shuttle Lock Mechanism for the petitioner. Besides this the Committee has recommended a Silicone Liner to be changed after every one year for a period of four years as the life of the artificial limb is for five years. As per the report the price of the Silicone Liner is Rs.21,943/-. Thus, the petitioner will require change of four liners and will have to spent Rs.87,772/- (Rs.21,943 X 4) for the life of the artificial limb i.e. for five years.

In the estimation of the Tribunal the petitioner may have his life till the age of 75 years. As on date the petitioner is 43 years of age and thus, he is expected to live for another 32 years. Therefore, the petitioner would require six prosthetic limb including the change of silicone liner every year. Thus, the petitioner will have to incur Rs.3,62,772/- for five years. The expenditure on six prosthetic limbs will be Rs.21,76,632/- (Rs.3,62,772 x 6). The Tribunal awards Rs. 21,76,632/- under this head."

16. I find no fault in the above determination of the learned Tribunal.

17. In ***Mohd. Sabeer @ Shabir Hussain v. Regional Manager, U.P. State Road Transport Corporation***, 2022 SCC

OnLine SC 1701, the Supreme Court, while considering a claim of an injured aged about 37 years, has observed as under:-

> *"**<u>COMPENSATION FOR THE PURCHASE AND MAINTENANCE OF THE PROSTHETIC LEG</u>***
>
> *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 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/-."*

18. In the present case, the Committee had opined that the prosthetic limb suitable for the claimant would cost around Rs.2,75,000/- and would have a life of 5 years. It would also require a Silicone Liner, which needs to be replaced annually, the cost of which would be Rs.21,943/- per annum. The learned Tribunal, therefore, rightly determined the cost of the prosthetic limb, including its maintenance, to be Rs.3,62,720/-. Even assuming that the claimant would live on for 70 years, if not more, the prosthetic limb would still need to be changed at least six times. The learned Tribunal has, therefore, rightly awarded a sum of Rs.21,76,632/- as compensation in favour of the claimant towards the cost and maintenance of a prosthetic limb.

<u>Interest on compensation for Prosthetic Limb:</u>

19. As noted hereinabove, the learned counsel for the claimant does not dispute that the compensation awarded

towards cost and maintenance of the prosthetic limb shall not carry any interest.

20. Accordingly, while upholding the Award of Rs.21,76,632/-, as awarded by the learned Tribunal in favour of the claimant towards the cost of a prosthetic limb, the Award insofar as it awards 9% interest on this amount from the date of filing of the DAR till its realisation, is set aside.

Loss of Income:

21. As far as the compensation awarded towards loss of income of Rs.1,08,000/- is concerned, the same is also set aside as the loss of future income would cover this aspect of compensation as well. The same has been conceded by the learned counsel for the Claimant as well.

Functional Disability:

22. On the plea of the learned counsel for the Insurance Company that as the claimant has been awarded the cost of a prosthetic limb, his functional disability should be reduced for determining the loss of future income, I do not find any merit. The learned Tribunal in the Impugned Award has recorded the nature of the injury suffered by the claimant as 80% qua his left lower limb, and above knee amputation. The learned Tribunal, taking into account the fact that the claimant was working as a sweeper and performing manual labour, determined his functional disability as 60%. Even with a prosthetic limb, the claimant may not be able to perform the work that he was doing at the time of the accident. The prosthetic limb may at best give

him the means to live a dignified life. The assessment of the functional disability at 60% by the learned Tribunal, therefore, cannot be faulted and does not deserve to be reduced any further only because the claimant has been provided means for procuring a prosthetic limb. The said challenge shall, therefore, stand rejected.

Future Prospects:

23. On the issue of future prospects, in view of the judgment of the Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and Others***, (2017) 16 SCC 680, and keeping in view the nature of the work that the Claimant was performing before the accident and his age on the date of the accident, the claimant would be entitled to consideration of future prospects at the rate of 25%. It is so ordered. The Impugned Award shall stand modified in this regard.

Income of the Claimant:

24. As far as the income of the claimant is concerned, the learned Tribunal has held that as the claimant was receiving a sum of Rs.12,000/- per month in his bank account, the same would reflect his salary.

25. The minimum wage for unskilled labour notified by the Government of NCT of Delhi at the time of the accident was Rs.13,350/- per month. Even if the claim of the claimant that he was actually receiving a salary of Rs.15,000/- per month out of which Rs.3000/- per month was received in cash, was disbelieved, in my view, the learned Tribunal should have

determined the loss of income for the claimant by taking the minimum wages of an unskilled labour into account. The Award shall stand modified to this extent.

Conclusion:

26. In view of the above, both the appeals partially succeed.

27. The compensation amount is re-determined as under:-

Medical Expenses	Rs. 3,646/-
Pain & Suffering & Enjoyment of Life	Rs. 2,00,000/-
Special Diet, Conveyance & Attendant Compensation for Mental & Physical Shock Compensation for Mental & Physical Shock	Rs. 50,000/- Rs. 1,00,000/-
Loss of Future Income (Rs.13,350/- x 25%) + 13350 = Rs.16,687.50 16,687.50 x 12 x 14 x 60% (functional disability) = Rs.16,82,100/-	Rs. 16,82,100/-
Loss of Amenities	Rs. 75,000/-
Cost of Artificial Limb	Rs. 21,76,632/-
Total	Rs. 42,87,378/-

28. All components of compensation, other than the cost of the prosthetic limb, shall carry interest at the rate of 9% from the date of the filing of DAR, till the date of its deposit with the learned Tribunal.

Directions:

29. In case, the amount deposited by the Insurance Company is found to be in excess of what has been determined by this order, the same shall be released in favour of the Insurance Company. In case, there is a shortfall in the amount deposited, the Insurance Company shall deposit the balance amount with the learned Tribunal within a period of eight weeks from today.

30. The amount so deposited shall be released in favour of the claimant in terms of the schedule of disbursal as stipulated in the Impugned Award.

31. The statutory amount deposited by the Insurance Company shall be released to the Insurance Company along with interest accrued thereon.

32. The appeals and the pending application are disposed of in the above terms. There shall be no order as to costs.

NAVIN CHAWLA, J

OCTOBER 5, 2023/*rv/am*