



2023 : DHC : 8701



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

% Reserved on : 23rd November, 2023

Pronounced on: 04th December, 2023

+ **MAC.APP. 199/2015 & CM APPL. 36938/2023**

UNITED INDIA INSURANCE CO LTD Appellant

Through: Mr. Amit Kumar Singh, Ms. K. Enatoli
Sema, Mr. Prang Newmai and Ms.
Chubalemla Chang, Advs.

versus

RAJNEESH SINGH & ORS Respondents

Through: Mr. Samrat Nigam and Mr. Abhimanyu
Ansh Walia, Advs.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This appeal is under Section 173 of the Motor Vehicles Act, 1988 assailing order dated 27th November, 2014 in MACT No. 358/2012 titled as "*Rajneesh Singh v. Dharamvir Sing & Ors.*" passed by the Ld. Motor Accidents Claims Tribunal, North East District, Karkardooma, Delhi. The Ld. Tribunal awarded a total compensation amounting to Rs. 94,35,950/- to the respondent/claimant against which the appellant insurance company has come up in appeal.

2. The incident occurred at about 4:30 a.m. when respondent No.1 (then aged 23 years) was travelling with his father on a motorcycle driven by



2023:DHG:8701



respondent No.1. They met with an accident with a Tavera Car No. DL-1YB-9593. Respondent No.1 and his father were immediately taken to GTB Hospital, Shahdara by a PCR Van. Father of the respondent No.1 was declared brought dead on arrival. Respondent No.1 sustained head injury and other severe bodily injuries. FIR No.73/2012 under Section 279, 338 and 304 (A) IPC, PS New Usmanpur came to be registered against the driver Dharamvir Singh (respondent No.2), who was later arrested.

3. From 22nd March, 2012 till 15th May, 2012, respondent No.1 remained admitted at Max Healthcare Super Specialty Hospital, Indraprastha Extension, Patparganj, Delhi and then from 15th May, 2012 to 19th June, 2012 at Indira Gandhi ESI Hospital, Jhilmil. On 06th October, 2012, the MACT case was filed before the Ld. Tribunal. Evidence was led by respondent No.1 and he examined himself (PW-1), an officer from Institute of Chartered Accountants of India, ICAI (PW-2), representative from Max Hospital (PW-3), and Dr. Tarun Vijay (PW-4).

4. The Ld. Tribunal awarded compensation of Rs.94,35,950/- out of which Rs.79,60,950/- was pecuniary compensation for the loss of future income due to permanent functional disability and the rest was on account of non-pecuniary compensation as well as compensation for other elements like conveyance, special diet etc. Tabulation of the compensation is provided as under:

S. No.	Component of compensation	Amount Awarded
Non-Pecuniary Compensation		
1.	Pain and suffering	Rs. 3,00,000/-

Signature Not Verified

Digitally Signed
By: MANISH KUMAR
Signing Date: 06.12.2023
13:51:19

MAC.APP. 199/2015

2/13



2023 : DHC : 8701



2.	Loss of amenities of life	Rs. 3,50,000/-
3.	Disfiguration	Rs. 50,000/-
4.	Loss of marital prospects	Rs. 1,00,000/-
Total Non-Pecuniary Compensation		Rs. 8,00,000/-
Pecuniary Compensation		
5.	Treatment	Nil.
6.	Loss of earning capacity (Rs. 25,000/- p.m.)	Rs. 79,60,950/-
7.	Special Diet and Conveyance	Rs. 50,000/-
8.	Salary of attendant	Rs. 75,000/-
9.	Future treatment/aid for rest of life	Rs. 5,00,000/-
Total Pecuniary Compensation		Rs. 86,35,950/-
Total compensation		Rs. 94,35,950/-

5. The appeal has been filed by the insurance company canvassing the following grounds:

- (i) Monthly income was not established.
- (ii) Physical disability and functional disability are two different things.
- (iii) Future prospects ought to have been 40%.



2023 : DHC : 8701



(iv) Compensation under pecuniary and non-pecuniary heads is incorrectly awarded.

(v) Compensation under Section 168 of the Motor Vehicles Act must be just and cannot be intended to be a bonanza.

The last two grounds were not pressed during arguments being otherwise included as part and parcel of the other grounds and submissions. Therefore, the assessment by this Court is of the first three grounds.

Monthly Income

6. On determination of monthly income, it was submitted by appellant's counsel that the assessment of monthly income of Rs.25,000/- for respondent No.1 as a student giving final year examinations of Chartered Accountancy (CA) was without basis and *de hors* the evidence on record. What was pressed was that the process of becoming a Chartered Accountant is arduous and only 8.26% of candidates are estimated to pass through the final examinations. The fact that the respondent No.1 had passed the first set of papers could not lead to a safe assumption that he would have passed his final papers for Chartered Accountancy and, therefore, would have earned a monthly income of Rs.25,000/-. For this purpose, data from various sources available on the internet has been presented as part of the written submissions. Further, reliance by the Ld. MACT on the fact that he was running a tuition centre where he allegedly earned Rs. 15,000 – 20,000/- was not supported by any documentary proof and, therefore, ought not to have been considered. Reliance was made on the decision by the Hon'ble Supreme Court in ***Chandra Alias Chanda Alias Chandraram and Anr. v. Mukesh Kumar Yadav and Ors.***, (2022) 1 SCC 198



2023: DHC: 8701



where it was held that in absence of a salary certificate, minimum wage notification along with some amount of guesswork not completely detached from reality, should act as a yardstick to determine the income of the deceased. Appellant's counsel contended that the Ld. Tribunal ought to have assessed monthly income of respondent No.1 based on minimum wages at the time of the accident (March 2012), which was around Rs.9,282/-. The relevant notification on minimum wages was also relied upon.

7. In response, the respondents submitted that respondent No.1 was 23 years old at the time of the accident and graduated with a B.Com. degree from Delhi University, was enrolled with the ICAI, had already cleared six papers in Group 1 and Group 2 of the CA Examination, and completed three years of Articleship Training during September, 2009 to July, 2011. Accident occurred in the final year of the CA course right before the examinations in which the two final groups containing four papers of each were remaining. The assessment that he would have cleared the CA Examinations and, therefore, would have the potential of earning at least Rs.25,000/- per month was, therefore, just, reasonable and rational. Further, that he was running a tuition centre in the name and style of "*M/s Rajneesh Tuition Centre*" and was earning Rs.15,000 – 20,000/- per month, teaching Mathematics and Accountancy to school students which had also come up as part of the evidence recorded.

Physical Disability and Functional Disability

8. Appellant's counsel contended that the disability of respondent No.1 could not have been assessed as 100%, since physical disability and functional disability were different things as observed authoritatively by the Hon'ble



2023: DHC: 8701



Supreme Court in *Raj Kumar v. Ajay Kumar*, (2011) 1 SCC 343. The cross-examination of PW-4, doctor from GTB Hospital, according to the appellant's counsel established that respondent No.1 had weakness in his four limbs and could not walk or stand without support. However, since he was not involved in any manual labour, such disability could not be a hindrance and coupled with the fact that his mental faculties were not impaired, even in a potential profession as a Chartered Accountant, he would have been able to sustain and progress.

9. Respondent No.1's counsel vehemently refuted this assessment. He stated that respondent No.1 had sustained a head injury as well as diffuse axonal injury and other bodily injuries. He was completely bedridden, and a disability certificate issued by the GTB Hospital certified a physical disability of 75% with permanent locomotor impairment of the whole body. He also relied on PW-4's testimony to contend that weakness in all four limbs of the body had led to him being unable to walk or stand without support. He stated that respondent No.1 needs a constant attendant for everyday tasks and has to necessarily undergo regular physiotherapy.

Future Prospects

10. Appellant's counsel contended that the Respondent No. 1 was considered to be self-employed or on a fixed salary below the age of 40 years at the time the accident and, therefore, as per the decision of the Hon'ble Supreme Court in *National Insurance Company Limited v. Pranay Sethi*, (2017) 16 SCC 680 an addition of 40% would be warranted, and not 50% as has been held by the Ld. Tribunal.



2023 : DHC : 8701



11. Respondent No.1's counsel contended that the accident was in 2012, which preceded the decision in *Pranay Sethi (supra)* and the Ld. MACT had, therefore, correctly appreciated the matter holistically and in the circumstances assessed the future prospects as 50%.

Analysis

12. Respondent No.1's testimony states that he was 23 years old, about to appear in his examination for completion of the CA, enrolled with ICAI and was also running a tuition centre from his home and earning Rs.15,000 – 20,000/- per month to make up the expenditure of his regular studies. Due to the accident and his injuries, he discontinued his studies to become a Chartered Accountant, and also stopped running the tuition centre, since he was unable to perform his daily functions, and was also not mentally adept to do intense work. He states that he is dependent on the families' finances and is unable to manage the tuition of students or any other physical work. Since his father also expired in the same accident, his family situation became precarious, and he suffered great mental pain, shock, trauma and agony aside from the permanent physical handicapped. That he was about to appear for his final examination of CA, was an admitted fact. As regards the tuition centre, he stated in his cross-examination that even though he had no documentary proof regarding the coaching given by him, he denied the suggestion that he was not running any coaching centre.

13. In these facts and circumstance, this Court is of the view that the possibility of him not clearing the Chartered Accountancy Examination may not be so acutely relevant to reduce his income assessment from Rs.25,000/-



2023: DHC: 8701



(as assessed by the Ld. MACT) to minimum wages prescribed at Rs.9,282/- (as asserted by the appellant). It is evident from the facts on record that not only was respondent No.1, a B.Com. Graduate but also had been successful in clearing his two groups of papers for the CA Exam and most importantly had already completed three years of Articleship. This coupled with the fact that he was possibly providing tuition to students of class 12th for Accountancy and Mathematics (even though there was no documentary proof) would show that he was a serious contender and not involved in the pursuit of CA as a pastime or with a half-hearted approach. He was clearly a serious student and even assuming against him that he was not giving tuitions to earn livelihood, reasonable assessment even in 2012 would be that he was a 24-year-old graduate, in the hope of acquiring a professional degree and had substantially travelled ahead on that path. Because an accident occurred just before the final examinations of CA, cannot reduce him to a minimum wages category. The Hon'ble Supreme Court in ***Chandra alias Chanda alias Chandraram and Another*** (*supra*) held as under:

“In absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the deceased. In absence of documentary evidence on record some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality. Merely because the claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income.”

14. The Ld. MACT has reasonably and rationally assessed the probable income of respondent No.1 and relied upon decisions of this Court and the



2023:DHG:8701



Hon'ble Supreme Court which mandate reasonable guesswork in absence of documentary proof. In the view of this Court, therefore, the appellant's contention is not borne out and deserves to be rejected.

15. As regards functional disability, the evidence of PW-4, the senior resident from GTB Hospital is noteworthy. He stated, categorically, that respondent No.1 was suffering from weakness in all four limbs of the body and based on the guidelines had given the certificate of disability. He stated "*the disability of the appellant is permanent and not likely to improve*". On being cross-examined by the appellant's counsel that he was able to stand and move in the courtroom with little assistance, and would that still justify a 75% disability assessment, PW-4 stated "*Patient is not completely paralyzed. He cannot walk or stand without support*" and then denied the suggestion that the patient does not suffer from any functional disability. Ld. MACT in the impugned award has also noted that the respondent No.1 had come to the Court in a wheelchair and that his condition showed that he would require a wheelchair for the rest of his life. Respondent's counsel also categorically stated that the respondent No.1 was bedridden and required the help of his family or the attendants to lift him or facilitate his mobility. Most importantly, the fact that all his four limbs have been affected which meant that the movements of sitting, standing, walking, as well as his ability to write or use his hands had been permanently affected. With none of the basic locomotor functions being unaffected and normal, in the opinion of this Court, it would make him incapable of managing any of his daily functions without support and, therefore, justifying an assessment of 100% functional disability. In this



2023:DHG:8701



regard, it would be useful to rely upon the Hon'ble Supreme Court's guideline for assessment of functional disability as provided in ***Raj Kumar*** (*supra*):

“12. Therefore, the Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence:

(i) whether the disablement is permanent or temporary;

(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;

(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person.

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

13. *Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from*



2023: DHC: 8701



earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.”

16. It would also be relevant to rely upon the Hon’ble Supreme Court’s observations in ***Rekha Jain v. National Insurance Company Limited and Others***, (2013) 8 SCC 389, wherein it was observed:

“28. This Court is required to keep in mind justice, equity and good conscience which must be the primary, relevant and important aspects for awarding just and reasonable compensation to an unfortunate victim, the appellant herein who has sustained grievous injuries to her body and whose future prospects are completely doomed. Further, the Tribunal and the courts while awarding compensation for bodily injuries, must realise that the possession of one's own body is the first and most valuable of all human rights and that all other possessions and ownership are the extensions of the basic right. Bodily injuries should be equated with the deprivation which entitles a claimant to damages and the amount of damages varies in accordance with the gravity of injuries.

xxxxxxx

xxxxxxx

xxxxxxx

54. In this regard, it is relevant to refer to the judgment of this Court in *National Insurance Co. Ltd. v. Mubasir Ahmed* [(2007) 2 SCC 349: (2007) 1 SCC (L&S) 643]. This Court has held that loss of earning capacity is not a substitute for percentage of physical disablement. It is simply one of the factors taken into account to award just and reasonable compensation. Even though the claimant does not suffer from 100% physical permanent disability, he suffers from 100% functional disability if he loses the capacity to pursue his work as a result of the accident.



2023: DHC: 8701



xxxxxxx

xxxxxxx

xxxxxxx

57. In this regard, in Baker case [Baker v. Willoughby, 1970 AC 467: (1970) 2 WLR 50: (1969) 3 All ER 1528 (HL)], it has been stated by Lord Reid that a man is not compensated for the physical injury; he is compensated for the loss which he suffers as a result of that injury. Therefore, the functional disability is a forceful alteration of career option of the appellant who has already undergone physical and mental injuries because of the accident. It would amount to adding distress to injury if one is forced to work with difficulty to earn his/her livelihood so as to reduce the burden of the wrongdoer in terms of compensation.”

17. Clearly the respondent No.1 was disabled from earning the livelihood that he was planning and proposing to achieve (as a CA Professional), he clearly could not effectively carry out activities and functions which he earlier did and was prevented and restricted from discharging his previous activities and functions. With his inability of all the limbs, the possibility of carrying on some lesser scale of activities cannot also be ascribed. The assessment, therefore, of the Ld. MACT is not incorrect and does not need modification. The appellant's contention of this ground is, therefore, also rejected.

18. Regarding the reduction of future prospects from 50% (as assessed by the Ld. MACT) to 40% [as per **Pranay Sethi (supra)**] is not acceptable to this Court. *Firstly*, the accident preceded **Pranay Sethi**. *Secondly*, even if the guidelines in **Pranay Sethi** are applied retrospectively, it prescribes for a claimant (who had a permanent job) below age of 40 years an addition of 50% for future prospects. In the assessment already made above regarding the possibility of respondent No.1 getting a permanent job as a Chartered Accountant Professional, and also the fact that the Ld. MACT did not make an unreasonable assumption at 50% (having preceded **Pranay Sethi**), this Court



2023:DHG:8701



does not find any reason to interfere with the assessment of future prospects at 50%. It is also noted that the accident occurred in 2012 (i.e. 11 years back) and the respondent No.1 has only got a benefit of Rs.10,00,000/- as a partial release from the amount deposited by the appellant in the Court. It is also noted that he had lost his father in the same accident. This Court finds no reason to accept the appellant's plea and reduce the components of compensation.

19. Therefore, the appeal stands dismissed. The impugned award of the Ld. MACT stands confirmed. The amounts deposited in this Court may accordingly be released to the respondent No.1 along with accrued interest.

20. Copy of the Judgment/Order be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

DECEMBER 04, 2023/mk

Signature Not Verified

Digitally Signed
By: MANISH KUMAR
Signing Date: 06.12.2023
13:51:19

MAC.APP. 199/2015

13/13