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

Date of decision: 20.09.2023

(9)+ MAC.APP. 489/2017

IFFCO TOKIO GENERAL INSURANCE COMPANY LTD

..... Appellant

Through: Mr.Brijesh Bagga, Adv.

versus

JOGENDER & ORS

..... Respondents

Through: Mr.S.N.Parashar, Adv.for R-1.
Mr.Jatin Rajput, Mr.Rajesh Kr.
Jha, Mr.Varun Panwar,
Mr.Sandeep Kumar, Adv. for
R-3.

(10)+ MAC.APP. 298/2018

JOGENDER SINGH

..... Appellant

Through: Mr.S.N.Parashar, Adv.

versus

**MOHAN SINGH, IFFCO TOKIO GEN INS CO LTD AND
ORS**

..... Respondents

Through: Mr.Jatin Rajput, Mr.Rajesh Kr.
Jha, Mr.Varun Panwar,
Mr.Sandeep Kumar, Adv. for
R-2.
Mr.Brijesh Bagga, Adv.for R-3.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

Signature Not Verified These cross appeals have been filed by the Insurance Company

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as also by the Claimant challenging the Award dated 14.02.2017 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal-01, (North), Rohini, Delhi (hereinafter referred to as the 'Tribunal') in Suit no.4603/2016, titled ***Jogender v. Mohan Singh & Ors.***

2. As two appeals challenge the same Award, they are being disposed of by this common judgment.

CHALLENGE TO THE IMPUGNED AWARD BY THE INSURANCE COMPANY:

3. As far as the Insurance Company is concerned, it challenges the Impugned Award on the following grounds: -

- a. That the learned Tribunal has erred in not granting a right in favour of the Insurance Company to recover the compensation paid to the claimant from the owner of the offending vehicle, that is, the crane bearing registration no.HR-55L-0590;
- b. The learned Tribunal has erred in assessing the functional disability of the claimant as 100% to the whole body when he had suffered permanent disability of only 81% towards right lower limb;
- c. That date of the accident was 24.03.2015, however, the learned Tribunal has adopted the minimum wages notified by the Government of NCT of Delhi for an unskilled labour with effect from 01.04.2015, that is after the date of the accident.



Non-grant of recovery rights

4. The learned counsel for the Insurance Company submits that the driving licence produced by the driver of the offending vehicle before the learned Tribunal was valid till 02.02.2015 as far as the transport vehicle is concerned, and for Light Motor Vehicle it was valid till 12.08.2030. He submits that as the Offending Vehicle is a crane and not a Light Motor Vehicle, even as per the weight given in the Registration Document of the Vehicle, the Driving License was not valid as on the date of the accident.

5. I am unable to accept the submission of the learned counsel for the Insurance Company. The driving licence produced by the driver of the offending vehicle stated its validity for 'Transport Vehicle' till 02.02.2015, and for 'Non-Transport Vehicle' till 12.08.2030. The learned Tribunal in its Impugned Award has held that as the offending vehicle was a crane, it would fall in the category of 'non-transport vehicle' and, therefore, the driving licence was valid as on the date of the accident.

6. The Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') defines a 'Transport Vehicle' in Section 2 (47) as under:

"2. Definitions.—In this Act, unless the context otherwise requires,—

xxxx

(47) "transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle;"

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7. Admittedly, the crane was not a public service vehicle, goods carriage, or an educational institution bus. It was also not a 'Private Service Vehicle' as well.

8. 'Private Service Vehicle' is defined, in Section 2(33) of the Act as under:

"2. Definitions.—In this Act, unless the context otherwise requires,—

xxxx

(33) "private service vehicle" means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward but does not include a motor vehicle used for public purposes."

9. As the offending vehicle was not a 'transport vehicle', it would necessarily fall under the category of 'non-transport vehicle', and therefore, the licence of the driver of the offending vehicle was valid as on the date of the accident.

10. The learned counsel for the Insurance Company has placed reliance on the judgment dated 06.02.2012 of the High Court of Madras in ***M/s ICICI Lombard General Insurance Co. Ltd. v. U.Rengarajulu & Ors.***, Civil Miscellaneous Appeal No. 1905/2020. The said judgment cannot come to the assistance of the learned counsel for the Insurance Company inasmuch as the only issue considered therein was whether the offending vehicle therein, being a crane having loaded weight of 11,200 kg, can be considered as a



‘Light Motor Vehicle’. In the present case, as the licence of the driver of the offending vehicle states that it is valid for ‘Non-Transport Vehicle’ till 12.08.2030, the question as to the fact that, whether the offending vehicle can be considered as a ‘Light Motor Vehicle’ as defined under Section 2(21) of the Act, is not relevant. It is a ‘non-transport vehicle’ for which the license was valid as on the date of the accident.

Functional Disability

11. As far as the assessment of the functional disability of the claimant by the learned Tribunal is concerned, the learned counsel for the Insurance Company reiterates that as the permanent disability suffered by the claimant was only 81% in relation to his right lower limb, the learned Tribunal has erred in assessing the functional disability as 100% to the whole body.

12. I am unable to accept the submission of the learned counsel for the Insurance Company. The claimant was working as a labourer at the time of the accident. Admittedly, his right limb is amputated from near hip-joint due to the injury suffered in the accident. His left hand is also operated by ORIF (Open Reduction and Internal Fixation), and skin grafting was again done. The Disability Certificate stated that the claimant had suffered 81% permanent physical disability in relation to his left upper and right lower limb. Keeping in view the vocation of the claimant and the nature of the injuries suffered by him and also being guided by the dicta of the Supreme Court in **Raj Kumar v. Ajay Kumar and Anr.**, (2011) 1 SCC 343, I find no fault of the learned



the whole body.

Minimum Wages

13. The learned counsel for the Insurance Company further submits that as the date of the accident was 24.03.2015, the minimum wages notified by the Government of NCT of Delhi as applicable on that date should have been adopted by the learned Tribunal for awarding the loss of income in favour of the claimant. He submits that the minimum wages that would get notified in future cannot be used for determining the loss of income.

14. I am unable to agree with the submission of the learned counsel for the Insurance Company. Adoption of the minimum wages is one of the methods that is, adopted by the Courts/Tribunals in assessing the reasonable compensation to be paid to the claimants for the injury suffered in the motor accident. In such approximation, the input which is most relevant to the date of the accident should be considered. In the present case, admittedly, within seven days of the date of the accident, a new Notification with respect to the minimum wages came into operation. The learned Tribunal has also, on that basis adopted the minimum wages notified by the Government of NCT of Delhi with effect from 01.04.2015 for assessing the loss of income to be awarded in favour of the claimant. I find no fault in the same.

15. The challenges of the Insurance Company to the Impugned Award are dismissed.

CHALLENGE TO THE IMPUGNED AWARD BY THE CLAIMANTS:

16. The claimant challenges the Impugned Award on the following

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grounds:

- a. That the learned Tribunal has failed to grant future prospects while determining the loss of income awarded to the claimant;
- b. The learned Tribunal has erred in restricting the compensation awarded to the claimants towards the cost of the artificial limb only Rs.1 lac.

Future Prospects

17. The learned counsel for the claimant, placing reliance on the judgment of the Supreme Court in *National Insurance Company Ltd v. Pranay Sethi & Ors.*, (2017) 16 SCC 680, submits that the future prospects at the rate of 40% should have been granted by the learned Tribunal. This could not be seriously disputed by the learned counsel for the Insurance Company.

18. In the present case, as the claimant was aged about 27 years and has been considered as working as a labourer, in view of the judgment of the Supreme Court in *Pranay Sethi* (supra), future prospects at the rate of 40% should have been considered by the learned Tribunal.

19. The Impugned Award shall stand modified accordingly.

Artificial Limb

20. As far as the cost of the artificial limb is concerned, the learned counsel for the claimant, placing reliance on the statement of Mr. Rakesh Kumar, Prosthetics and Orthotist from Endolite Prosthetics and Orthodontist Center (PW-2), submits that the witness has stated that the cost of the limb would be Rs.4,08,600/-; it has warranty of



activities of the patient. The socket is to be changed as per physique of the patient. Cost of socket is about Rs.20,000/-. He submits that in light of the above, the compensation awarded in favour of the claimant is extremely meager.

21. On the other hand, the learned counsel for the Insurance Company placed reliance on the statement of PW2 in his cross-examination. He submits that the witness had admitted that there would be cheaper systems of the same kind available in the market. He submits that keeping in view the above statement and the amount awarded to the claimant towards loss of income, the learned Tribunal has rightly assessed the compensation towards cost of limb as Rs.1 lac.

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

23. While PW-2 accepted that there would be cheaper artificial limbs available in the market, the estimate which was produced by him was of Rs.4,08,600/-. The respondent/Insurance Company did not lead any evidence on the cost of the limb that would be suitable for the claimant.

24. Even with the supply of the artificial limb, there would not be any effect on the loss of income that the claimant would suffer specially keeping in view his age as also that he was working as a labourer at the time of the accident. Compensation awarded to the Claimant on the head of loss of income, therefore, cannot be a justification for denying to him 'just compensation' towards artificial limb that would only give him some relief in his day to day activities



and allow him to lead a life with dignity.

25. In *Mohd. Sabeer @ Shabir Hussain v. Regional Manager, U.P. State Road Transport Corporation*, 2022 SCC OnLine 1701, the Supreme Court, while considering a claim of an injured aged about 37 years, had observed and assessed the compensation 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 SidheshwarDukre (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/-.”

26. In view of the above laid dicta, in my view, the compensation awarded to the claimant towards cost of prosthetic limb deserves to be enhanced. It is accordingly enhanced to Rs.10 lacs, towards the cost of the prosthetic limb. The prosthetic limb also requires regular maintenance, for the same, a lump-sum amount of Rs.3 lacs is awarded to the claimant.

27. Accordingly, the compensation awarded in favour of the claimant is enhanced, as under:

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Loss of future earnings	Rs.10,010/- x 140/100 x 12 x 17= Rs.28,58,856/-
Cost for artificial limb	Rs.10,00,000/-
Cost of repair of artificial limb	Rs.3,00,000/-
Total amount	Rs.41,58,856/-
(total amount – compensation awarded by Tribunal) = Total Enhanced compensation	Rs.41,58,856 – Rs.21,42,040= Rs.20,18,816 (rounded off to Rs. 20,20,000/-)

28. The learned counsel for the Insurance Company submits that on the enhancement of compensation granted to the claimant towards prosthetic limb, interest should not be awarded. In support he places reliance on the judgment of this Court in **IFFCO Tokio General Ins. Co. Ltd. v. Raja & Ors.**, 2014:DHC:4204, wherein this Court had not awarded *pendente lite* interest on compensation awarded towards future attendant charges and towards future medical treatment.

29. I am unable to agree with the submission made. It must be remembered that the compensation awarded to the claimant is on basis of estimation and on the prices that were prevalent around the time of the accident. The same would not remain static for all times to come and specifically for the entire lifetime of the claimant, which has been taken into account while awarding the compensation towards prosthetic limb. The escalation of prices has not been taken into account. The same would get balanced only if the Court also awards



30. The Supreme Court in *Mohd. Sabeer @ Shabir Hussain* (Supra), while enhancing the compensation payable to the claimant, including the enhanced amount for artificial limb and its maintenance, also awarded interest on the enhanced compensation from the date of the filing the application.

31. In *Raja & Ors.* (Supra), the Court has not given reasons for not awarding *pendente lite* interest in the said case. The same is, therefore, not a precedent on this issue. It may have been for peculiar facts of that case that the Court deemed it appropriate not to award *pendente lite* interest in favour of the claimant herein.

32. Accordingly, the claimant shall be entitled to the interest at the rate as awarded by the learned Tribunal on the enhanced compensation, both on account of future prospects as also on the cost and maintenance of prosthetic limb.

33. The Insurance Company shall deposit the enhanced amount of compensation alongwith interest thereon with the learned Tribunal, along with its calculation thereof, within a period of six weeks from today. The amount deposited shall be released to the claimant as per the schedule of disbursal prescribed in the Impugned Award.

34. The appeals filed by the claimant accordingly succeed.

35. Pursuant to the order dated 24.05.2017 passed in MAC. APP. 489/2017, the Insurance Company has deposited the awarded amount with the learned Tribunal. The same be also released in favour of the claimants in accordance with the schedule prescribed by the Impugned Award.

36. The statutory amount deposited by the Insurance Company shall



be released to the Insurance Company along with interest accrued thereon.

37. The appeals are disposed off in the above terms. There shall be no order as to cost.

NAVIN CHAWLA, J

SEPTEMBER 20, 2023/Arya

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