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IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Reserved on: 31.05.2023**Pronounced on: 14.07.2023*

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MAC.APP. 602/2013**NATIONAL INSURANCE CO. LTD.****..... Appellant**

Through: Mr. Himanshu Bhushan, Advocate
(through VC).

versus

SATENDER**..... Respondent**

Through: Mr. Yashpal Sapra and Mr. Jatin
Sapra, Advocates.

CORAM:**HON'BLE MR. JUSTICE GAURANG KANTH**

J U D G M E N T

GAURANG KANTH, J.

1. The present Appeal under Section 173 of Motor Vehicle Act, 1988 (hereinafter referred to as 'the Act') has been preferred by the Appellant (original Respondent No. 3) against the Award dated 13.05.2013 (hereinafter referred to as 'Impugned Award') passed by learned Additional District & Sessions Judge-cum-Presiding Officer, Motor Accident Claims Tribunal, Rohini Courts, Delhi (hereinafter referred to as 'Claims Tribunal') in MACT No. 39/2011 titled as '*Satender v. Sahdev Singh & Ors.*'.
2. By way of the Impugned Award, the learned Claims Tribunal awarded a compensation of Rs. 20,81,422/- (Rupees Twenty Lakh

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Eighty One Thousand Four Hundred and Twenty Two Only) to Respondent (original Petitioner) along with interest @ 9% per annum from 31.01.2011 till the date of actual payment. Appellant was directed to pay the said compensation amount, being the insurer of the offending vehicle bearing No. UP-17D-2122, within a period of 30 days from the date of Impugned Award along with accrued interest.

FACTS RELEVANT FOR ADJUDICATION OF THE MATTER

3. Facts of the matter as recorded by the learned Claims Tribunal are as under:

“On the unfortunate day of 28.11.2010 at about 12.00 AM when the petitioner with his cousin was coming to Delhi from Mujaffar Nagar on his motorcycle and when reached near bus stand Mind Kali PS Budhana Distt. Mujaffar Nagar, the offending car bearing No. UP 17D 2122 being driven by respondent No. 1 very rashly and negligently and without caring the traffic rules during overtaking a truck hit the motorcycle from front side due to which the petitioner and his cousin sustained multiple injuries. Due to the accident the petitioner suffered crush injuries to his right leg and his right leg upto above knee has been amputated by the doctors of Sushruta Trauma Centre. The accident occurred due to negligence on part of respondent No. 1. The FIR was registered in respect of this accident vide FIR No. 912/10, PS Budhana, U/s. 279/338/427 IPC.”

4. Since the Respondent suffered injuries in the aforementioned accident, consequently, he filed a Claim Petition bearing MACT No. 39/2011 before the learned Claims Tribunal under Sections 166 and 140 of the Act seeking compensation of Rs. 30,00,000/- along with interest @ 12% from the date of filing of the petition till the date of realization of actual amount.
5. The driver (original Respondent No. 1) of the offending vehicle and owner (original Respondent No. 2) of offending vehicle contested the Claim Petition filed by Respondent by filing a joint written statement.



They denied all the allegations of the Respondent and it was their claim that they have been falsely implicated in this case. It was further claimed that the driver of the offending vehicle had a valid driving license. Appellant also filed its written statement wherein it denied all the allegations made by Respondent / Injured.

6. On the basis of the pleadings of the parties, the Claims Tribunal framed the following issues:-

“1. Whether Satender son of Sh. Ram Kishan suffered injuries due to road accident on 28.11.2010 at about 12.00 AM within jurisdiction of PS Budhana, Distt. Mujaffar Nagar, UP due to rash and negligent driving of vehicle No. UP 17D 2122 being driven by respondent No. 1? OPP
2. Whether the petitioner is entitled to compensation, if so to what an extent and from which of the respondents? OPP.
3. Relief.”

7. At the stage of evidence, Respondent/ Injured examined himself as PW-1 and tendered medical bills as Ex. PW1/1, salary certificate as Ex. PW1/2, certified copy of criminal case record as Ex. PW1/3, election card as Ex. PW1/4, and his educational qualification record as Ex. PW1/5. Further, Respondent examined Sh. Sandeep Vyas as PW-2, who tendered appointment letter of Injured dated 03.10.2009 as Ex. PW2/1, confirmation letter of Injured as Ex. PW2/2, and vouchers of salary paid to Injured as Ex. PW2/3. Respondent had moved an application before the learned Claims Tribunal seeking his medical examination to ascertain the level of disability. Learned Claims Tribunal directed medical board of Dr. Baba Saheb Ambedkar Hospital, Delhi to conduct examination of Respondent. Consequently, Dr. Baba Saheb Ambedkar Hospital, Delhi issued a Disability



Certificate proving 80% permanent disability of right lower limb of Injured, which was exhibited as Ex. PX.

8. The driver and owner of the offending vehicle had stopped appearing before the Claims Tribunal so they were proceeded *ex-parte*. Hence, they did not lead any evidence. Opportunity was granted to Appellant to lead evidence, but no evidence was led by Appellant also.
9. After examining the evidence brought on record by the parties, the Claims Tribunal passed the Impugned Award wherein it held that the Respondent suffered grievous injuries due to accident which had taken place because of negligence on the part of driver of offending vehicle who was driving the offending vehicle bearing No. UP-17D-2122. Thus, vide the Impugned Award, the Claims Tribunal awarded a compensation of Rs. 20,81,422/- to the Respondent along with interest @ 9% p.a. from the date of filing of claim petition till actual realisation of compensation amount. Claims Tribunal awarded the said compensation amount under the following heads:

HEAD	AMOUNT (in Rs.)
Loss of Income	21,450
Loss of future prospects	17,50,320
Medical expenses	5,652
Special diet expenses	7,000
Conveyance charges	7,000
Pain, suffering, mental shock and trauma	40,000
Loss of amenities, etc.	1,00,000
Loss of marriage prospects	1,50,000



10. Vide the Impugned Award, the Claims Tribunal directed the Appellant to pay the said compensation amount along with accrued interest to the Respondent within a period of 30 days from the passing of Impugned Award. Hence, being aggrieved by the Impugned Award, the Appellant has preferred the present Appeal seeking setting aside or modification of the Impugned Award.

SUBMISSIONS ADVANCED ON BEHALF OF APPELLANT

11. Mr. Himanshu Bhushan, learned counsel appearing for Appellant submitted that Appellant has challenged the Impugned Award primarily on three grounds. It was submitted that the first ground is that the Claims Tribunal erred when it granted compensation under the head loss of future prospects to the Respondent. It was submitted that as per the judgment of Hon'ble Supreme Court in *National Insurance Co. Ltd. Vs Pranay Sethi & Ors.*, (2017) 16 SCC 680, compensation under the said head can only be granted in a case where death has taken place. However, in the present case, only injury has been suffered by Respondent, so compensation under said head cannot be granted to the Respondent. It was stated that while calculating the compensation under loss of future prospects, the learned Claims Tribunal wrongly relied upon the decision of Hon'ble Apex Court in *Rajesh & Ors. Vs Rajbir Singh & Ors.*, (2013) 9 SCC 54, and hence, wrongly added 50% of Respondent's income to his income to arrive at his future income. It was his contention that the ratio in *Rajesh Vs Rajbir* (*supra*) also has to be applied in cases



where death of the victim in accident has taken place. Further, Mr. Bhushan submitted that the learned Claims Tribunal could have granted compensation of Rs. 11,66,880/- (7,150/- x 12 x 17 x 80%) under the head 'loss of future earnings on account of future disability' or 'loss of future earning capacity', as per the decision of Hon'ble Apex Court in ***Raj Kumar Vs Ajay Kumar & Anr.*** reported as (2011) 1 SCC 343, but not under the head of loss of future prospects.

12. Another ground raised by Appellant challenging the Impugned Award was that learned Claims Tribunal had awarded a sum of Rs. 1,50,000/- under the head of loss of marriage prospects to the Respondent, which needs to be set aside in view of the fact that marriage of Respondent has taken place. Learned counsel for the Appellant submitted that the Respondent had moved an application bearing CM No. 2310/2015 seeking release of 50% of amount deposited in FDR in order to meet the expenses of marriage. Consequently, this Court, vide Order dated 15.04.2015, directed release of Rs. 2,50,000/- in favour of Respondent. It was argued that under these circumstances, Respondent is not entitled for compensation under the head of loss of marriage prospects and the Impugned Award should be modified accordingly after setting aside the compensation under said head.
13. Mr. Bhushan submitted that the third ground challenging the Impugned Award is that the learned Claims Tribunal granted a sum of Rs. 1 Lakh under the head of loss of amenities, which is pretty much on higher side. He relied upon the decision of Hon'ble Apex Court in ***Raj Kumar*** (*supra*) in order to support this contention. He requested



for reducing the same and accordingly, modification of Impugned Award.

14. With these submissions, Mr. Bhushan, learned counsel appearing for Appellant asserted that the learned Claims Tribunal erred while calculating the amount awarded to Respondent and hence, prayed for setting aside or modification of Impugned Award.

SUBMISSIONS ADVANCED ON BEHALF OF RESPONDENT

15. Mr. Yashpal Sapra, learned counsel appearing for Respondent submitted that learned Claims Tribunal had added 50% of his salary i.e. Rs. 7,150/- for the purpose of calculating future prospects in compliance of the judgment passed by Hon'ble Apex Court in ***Rajesh Vs Rajbir (supra)***.
16. It was further submitted that the learned Claims Tribunal had also held that 80% permanent disability should be considered as 100% disability in view of the nature of work the Respondent was engaged in i.e. field work (physical work). But, while calculating the amount under future prospects, learned Claims Tribunal calculated the said amount as per 80% permanent disability only. Mr. Sapra relied upon the decision of Hon'ble Supreme Court in the case of ***Raj Kumar Vs Ajay Kumar***, reported as ***(2011) 1 SCC 343***, wherein it was held that the effect of the permanent disability on the earning capacity of injured must be considered and after assessing the loss of earning capacity in terms of percentage of income, future loss of earnings suffered by injured person has to be quantified. It was submitted that



in view of decision in ***Raj Kumar*** (supra), the loss of future prospects should be calculated as per 100% permanent disability.

17. Further, Mr. Sapra submitted that as per decision in ***Raj Kumar*** (supra), learned Claims Tribunal should have granted compensation for future medical expenses, particularly for the cost of artificial limb and at least for one replacement of the same, but the learned Claims Tribunal failed to do so. While relying upon the decision of Hon'ble Supreme Court in ***Govind Yadav Vs New India Insurance Co. Ltd.***, reported as ***(2011) 10 SCC 683***, it was further submitted that the learned Claims Tribunal should also have granted compensation for enabling the Injured person to purchase a new artificial limb when the previous one wears out. He also relied upon the decision of this Court in ***Zahid Khan Vs Arun Mandal***, reported as ***2015 SCC Online Del 7606***, to contend that the Respondent/ Injured was only 27 years old when the accident took place, so keeping in mind his young age at the time of accident, the learned Claims Tribunal should have granted the compensation for procuring artificial limb and at least one replacement of the same. Moreover, it was submitted that an amount for damages of amputation of leg and disfigurement should also be awarded to Respondent in view of decision of this Court in ***Alok R. Maurya Vs. Naresh Chander Kapoor***, reported as ***2012 SCC Online Del 5569***.
18. Furthermore, Mr. Yashpal Sapra submitted in view of the injury and disability suffered by the Respondent, he requires support of an attendant for his entire life, for which, he should have been awarded at least Rs. 2 lakh.



19. It was also contention of Mr. Sapra that in view of the nature of loss and injuries suffered by Respondent, the non-pecuniary damages awarded by the learned Claims Tribunal to the Respondent are just and fair. Hence, this Court should not interfere with the same.
20. Lastly, Mr. Yashpal Sapra prayed that the award passed by the learned Claims Tribunal be enhanced by adding the amount for artificial limb with at least 1 replacement of the same i.e., Rs. 2,00,000/- + Rs. 2,00,000/-; a sum of Rs. 1,75,000/- for damage to artificial leg and disfigurement; a sum of Rs. 2,00,000/- for attendant charges; and correct the amount awarded for the head of loss of future prospects after considering permanent disability as 100%. He relied upon the decision of this Court in *Shriram General Insurance Co. Ltd. Vs Bimlesh, MAC Appeal 648/2014*, in order to contend that a claimant can be granted enhanced compensation without preferring an appeal or a cross-objection in an appeal filed by an Insurance Company.

LEGAL ANALYSIS

21. This Court has heard the submissions of the parties and examined the documents available on record and the Trial Court record.
22. The main contention of Appellant was that the learned Claims Tribunal should not have granted compensation under the head of loss of future prospects. It was claimed that compensation under the head of loss of future prospects can only be granted to the claimants where death of the victim has taken place by way of an accident, as per the law laid down in the case of *Pranay Sethi* (supra).



23. It was further contended that the amount granted under the said head of loss of future prospects has also been wrongly calculated by the learned Claims Tribunal. It was stated that the addition of 50% of Respondent's income to his income while calculating the loss of future prospects was erroneous. While adding 50% of Respondent's income, the learned Claims Tribunal relied upon the decision in ***Rajesh Vs Rajbir*** (supra). It was argued that the reliance upon the decision in ***Rajesh Vs Rajbir*** (supra) was erroneous as the Hon'ble Supreme Court in the said decision has stated that compensation under the head loss of future prospects can only be granted in the cases where death of the victim has taken place in an accident. It was further contended that instead of granting compensation under the head of loss of future prospects, learned Claims Tribunal should have granted compensation under the head of loss of future earnings on account of permanent disability.
24. This Court does not agree with the contentions of the Appellant. It is well settled law that a person who has suffered permanent disability in an accident caused by a motor vehicle, is also entitled to compensation under the head of loss of future prospects and compensation under the said head not only has to be granted in the cases of fatal accidents leading to death. The whole purpose of awarding compensation under the Act is to restore a victim of accident to a financial position which he had prior to occurrence of accident. In this regard, it would be apt to refer to the decision of Hon'ble Supreme Court in the case of ***Pappu Deo Yadav Vs Naresh***



Kumar & Ors., reported as **2020 SCC Online SC 752**. The relevant para of the judgment is extracted hereinbelow:

“7. Two questions arise for consideration: one, whether in cases of permanent disablement incurred as a result of a motor accident, the claimant can seek, apart from compensation for future loss of income, amounts for future prospects too; and two, the extent of disability. On the first question, the High Court no doubt, is technically correct in holding that Pranay Sethi involved assessment of compensation in a case where the victim died. However, it went wrong in saying that later, the three-judge bench decision in Jagdish was not binding, but rather that the subsequent decision in Anant to the extent that it did not award compensation for future prospects, was binding. This court is of the opinion that there was no justification for the High Court to have read the previous rulings of this court, to exclude the possibility of compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. Such a narrow reading of Pranay Sethi is illogical, because it denies altogether the possibility of the living victim progressing further in life in accident cases - and admits such possibility of future prospects, in case of the victim's death.

8. This court has emphasized time and again that “just compensation” should include all elements that would go to place the victim in as near a position as she or he was in, before the occurrence of the accident. Whilst no amount of money or other material compensation can erase the trauma, pain and suffering that a victim undergoes after a serious accident, (or replace the loss of a loved one), monetary compensation is the manner known to law, whereby society assures some measure of restitution to those who survive, and the victims who have to face their lives....”

25. It would also be apposite to refer to the decision of Hon'ble Supreme Court in **Mohd. Sabeer @ Shabir Hussain Vs Regional Manager, U.P. State Road Transport Corporation**, reported as **2022 SCC Online SC 1701**. The relevant portion of the judgment is extracted as follows:

“18. It is a well settled position of law that in cases of permanent disablement caused by a motor accident, the claimant is entitled to not just future loss of income, but also future prospects. It has been reiterated by this Court in multiple instances that “just compensation” must be interpreted in such a manner as to place

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the claimant in the same position as he was before the accident took place.”

26. Thus, in view of the ratio laid down in these decisions, learned Claims Tribunal rightly granted compensation under the head of loss of future prospects.
27. Now, with respect to the compensation under loss of future prospects, it is observed that in view of Para 59.4 of **Pranay Sethi** (supra), future prospects of 40% should be granted to a person who had a fixed salary and who was below the age of 40 years at the time of accident. The Respondent was 27 years old at the time of accident and was an employee of GR Health Aids Private Limited. Thus, he is entitled for 40% of future prospects by the learned Claims Tribunal. Hence, the Respondent's monthly income, inclusive of future prospects, is reassessed at Rs. 10,010/- (Rs. 7,150/- + 40% of Rs. 7,150/).
28. It is noted that learned Tribunal assessed the permanent disability of the Respondent as 100%, however, while calculating the loss of income due to permanent disability, learned Claims Tribunal calculated it on the basis of 80%. A perusal of appointment letter (Ex. PW2/1) of the Respondent shows that the Respondent was engaged in field work in the said Company. Since, his right leg got amputated due to the injuries suffered by him in the accident, he was removed from his job as has been stated by Respondent in his cross examination. Further, the Respondent has only studied till 10th class and thus, it would not have been easy for him to find a job not involving physical activity. Hence this Court is of the considered view that the learned Claims Tribunal rightly assessed the permanent



disability as 100%, and hence loss of income due to permanent disability would be Rs.10,010/- X 12 X 17 X 100% = Rs.20,42,040/-

29. In so far as the contention of Appellant with respect to grant of sum of Rs. 1,50,000/- towards loss of marriage prospects is concerned, this Court agrees with the contention of Appellant that Respondent is not entitled to the compensation granted under the head of loss of marriage prospects in view of the fact that the Respondent got married during the pendency of the present Appeal. This Court has perused the application bearing CM No. 2310/2015 filed by Respondent seeking release of 50% of amount deposited in FDR for bearing the expenses of his marriage. As per this application, marriage of Respondent took place on 15.02.2015. This Court has also perused the Order dated 15.04.2015, whereby a direction was passed for release of Rs. 2,50,000/- in favour of Respondent in order to cover some costs of marriage. Thus, the Respondent has got married and is not suffering from the pain and mental agony of not being able to get married due to his injuries, so he is not entitled for compensation under the head of loss of marriage prospects.
30. It was also the contention of Appellant that the compensation of Rs. 1 lakh granted under the head of loss of amenities by the learned Claims Tribunal is very high. He relied upon the decision rendered in the case of **Raj Kumar** (supra) in support of his submission. In contrast, Mr. Yashpal Sapra, learned counsel for Respondent submitted that in view of the nature of loss and injuries suffered by Respondent, the compensation awarded by the learned Claims Tribunal is just and fair.



31. This Court has perused the decision of Hon'ble Supreme Court in **Raj Kumar** (supra). The portion of judgment on which the Appellant is relying upon is reproduced hereinbelow:

"15. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may."

32. However, at the same time, attention also needs to be given to Para 5 of the judgment passed in the case of **Raj Kumar** (supra), which states as follows:

"5. The provision of the Motor Vehicles Act, 1988 ("the Act", for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. [See C.K. Subramania Iyer v. T. Kunhikuttan Nair, R.D. Hattangadi v. Pest Control (India) (P) Ltd. and Baker v. Willoughby.]"

33. It is pertinent to note that it has been reiterated several times by the Hon'ble Supreme Court in its several decisions that the purpose of granting compensation is to ensure that the victim enjoys his life in such a way that he used to do prior to meeting with the accident.

Further, it is observed by this Court that in **Raj Kumar** (supra) case, **MAC.APP. 602/2013**

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the injured only had 25% permanent disability and his loss of earning capacity was fixed by Hon'ble Apex Court at 20%, whereas, in the present case, the Respondent had 80% permanent disability of his right limb and his loss of earning capacity has been fixed at 100% by the learned Tribunal. Thus, the gravity of injury suffered by the Respondent in the present case is far more than what was suffered by the injured in the case of **Raj Kumar** (*supra*). Further, at the cost of repetition, it is reiterated that Respondent has only studied till 10th class and thus, it would not have been easy for him to find a job not involving physical activity with this educational qualification. If the accident would not have taken place, then he would have continued working in his permanent job involving field work and would have been able to enjoy way more amenities. Therefore, this Court is of the view that learned Claims Tribunal has awarded a just and fair sum of amount in compensation towards loss of amenities.

34. Learned Counsel for the Respondent submits that the learned Claims Tribunal should have granted compensation for procurement of artificial limb and its replacement. It was submitted that compensation for damages of amputation of leg and disfigurement, and attendant charges should also be granted to the Respondent. In this regard, it is observed that the Respondent accepted the Impugned Award and never challenged the same. Further there is no such pleadings or evidence before this Court to show that the Respondent procured or intend to procure artificial limb. It is only during the course of the argument, learned Counsel for the Respondent made submissions based on various judgments. In the absence of any evidence in this



regard, no compensation can be granted to the Respondent in this regard. Hence, the submissions of learned Counsel for the Respondent seeking enhancement of compensation, is hereby rejected.

CONCLUSION

35. Keeping in view the observations made hereinabove, this Court partly allows the appeal and modify the Impugned Award passed by learned Claims Tribunal accordingly. The compensation granted to the Respondent under the various heads is as follows:-

HEAD	AMOUNT (in Rs.)
Loss of Income	Rs.21,450/-
Loss of future prospects and Loss of future earnings due to disability	Rs.20,42,040/-
Medical expenses	Rs.5,652/-
Special diet expenses and Conveyance charges	Rs.7,000/- +Rs.7,000/- =Rs.14,000/-
Pain, suffering, mental shock and trauma	Rs.40,000/-
Loss of amenities, etc.	1,00,000/-
Total	22,23,142/-

36. The compensation awarded by the Claims Tribunal, therefore, stands enhanced from **Rs. 20,81,422/-** to **Rs. 22,23,142/-**.
37. Hence in view of the same, the Appellant is directed to deposit the differential amount with 9% interest per annum from the date of filing of the present Appeal till the date of deposit with the Registrar General of this Court within a period of four weeks. Upon deposit of



the said differential amount by the Appellant, the Registry is directed to release the said amount to the Respondent.

38. Pursuant to the Impugned Award, the account of the Appellant has been attached by the learned Tribunal and hence, the original awarded amount has been satisfied. Out of the said original awarded amount, learned Tribunal directed for the release of Rs. 10,000/- to the Respondent and the balance was kept in an interest-bearing FDR with liberty to the Respondent to withdraw the monthly interest accrued on the said FDR. As observed herein above, out of the said FDR, this Court vide order dated 15.04.2015 directed for the release of Rs. 2.5 Lakh to the Respondent for the purpose of his marriage. Hence, the balance amount is lying deposited with the learned Trial Court. Respondent is free to withdraw the said FDR which is lying deposited in his name.
39. The statutory deposit shall be released to the Appellant.
40. The Appeal along with pending application, if any, stands disposed of. No order as to costs.

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GAURANG KANTH, J.

JULY 14, 2023

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