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

Date of decision: 20.07.2023

+ **MAC.APP. 454/2017 & CM APPL. 20382/2022**
NATIONAL INSURANCE CO LTD

..... Appellant

Through: Mr.Arihant Jain & Mr.Shantha
Devi Raman, Advs.

versus

MANOJ PRASAD & ORS

..... Respondent

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

+ **MAC.APP. 588/2018**
MANOJ PRASAD

..... Appellant

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

versus

HARINDER MEHTA & ORS (NATIONAL INSURANCE
COMPANY LTD)

..... Respondent

Through: Mr.Arihant Jain & Mr.Shantha
Devi Raman, Advs. for R-3.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. These cross appeals have been filed by the Insurance Company and also by the Claimant, challenging the Impugned Award dated 28.02.2017 passed by the learned Motor Accidents Claims Tribunal, Dwarka Courts, New Delhi (hereinafter



referred to as the ‘Tribunal’) in MACP No. 285/13/14, titled as ***Sh. Manoj Prasad v. Sh. Harinder Mehta & Ors..***

2. It is not in dispute in the appeals that consequent upon the accident, the Claimant has suffered “post traumatic Paraparesis with fracture D3 with permanent physical disability of 75% (seventy five percent) in relation to both lower limbs”. The learned Tribunal has awarded compensation in favour of the Claimant on the following heads:-

S. No	HEADS	AMOUNT (In Rupees)
1	Attendant Charges	50,000/-
2	Conveyance & Special Diet	1,00,000/-
3	Loss of enjoyment of life & amenities	1,00,000/-
4	Disability & Future Loss of Earning	1,04,11,200/-
5	Loss of Income	2,89,200/-
6	Medicines, Treatment and equipment	3,77,089/-
7	Pain & Suffering	1,00,000/-
	Total	Rs.1,14,27,489/-

Challenge regarding addition of incentive to determine the income of the claimant:

3. The first challenge of the Insurance Company is to the addition of Rs.15,000/- per month claimed to be the incentive received by the Claimant from his employer, that is, M/s LBF Travel India Pvt. Ltd (hereinafter referred to as the



“Employer”). The learned counsel for the Insurance Company submits that the pay slips of the Claimant for the months of June to September, 2013 [Ex PW1/B (colly.)] do not show any payment being made as incentive to the Claimant. He submits that PW1- Shri Gopal Bhandari, Sr. H.R. Executive of the Employer did not mention about any incentive being paid to the Claimant. However, PW-4- Shri Dalip Kumar, Sr. Admin. Executive, of the Employer stated that while the salary slips [EX.PW-1/B)(Colly)] did not show payment of any incentive to the Claimant, but volunteered that the Claimant was entitled for incentives and was getting incentives through cash. The witness, however, did not produce any record to substantiate this statement. He submits that, therefore, there was no evidence on record to establish that the Claimant was receiving Rs.15,000/- from the employer as an incentive, and the learned Tribunal has erred in adding the same to his income.

4. On the other hand, the learned counsel for the Claimant submits that the payment of incentives is evident from the statement of the bank account of the Claimant maintained with the ICICI Bank as also from a certificate/statement issued by the ICICI Bank which reflects a payment of Rs.30,000/- being credited to the Claimant's bank account on 21.09.2013, and further amounts of Rs.14,695/- and Rs.11,786/- being credited to his account on 19.10.2013 and 31.10.2013. He submits that these amounts reflect the payment of incentive by the employer



to the Claimant. To a query of this Court as to whether any witness of the Claimant has testified to the effect that these entries, in fact, relate to payment of incentive by the employer to the Claimant, he fairly admits that no witness has deposed to this effect. He submits that amounts reflected in the statement, however, duly correspond to the claim of the Claimant that an amount of Rs.15,000/- per month was being paid by the employer to the Claimant as incentive.

5. I am unable to agree with the submission made by the learned counsel for the Claimant. As has been held by the Supreme Court in ***Central Bureau of Investigation v. V.C. Shukla*** (1998) 3 SCC 410, entries in a statement of account are not primary evidence of the fact; they are merely corroborative and have to be proved through primary evidence. In the present case, PW-1 Mr.Gopal Bhandari, Senior H.R. Executive with the LBF Travels India Pvt. Ltd. did not mention payment of any incentive to the Claimant. PW-4 stated that such incentive was being paid in cash by the employer to the Claimant. Therefore, it was not the case of the employer that the payment of incentive has been made through any banking transactions. The case now set up by the Claimant is, therefore, even beyond the evidence that was produced by the Claimant before the learned Tribunal, and cannot be accepted.



6. The Claimant, in his cross-examination, stated that he has filed his Income Tax Returns. However, even these were not produced before the learned Tribunal.

7. I, therefore, hold that the Claimant has been unable to prove that he was receiving an incentive of Rs.15,000/- per month from the employer and that the same deserves to be added to his monthly income. The Impugned Award insofar as it adds a sum of Rs.15,000/- to the income of the Claimant is, therefore, set aside.

Challenge regarding non deduction of Income Tax

8. The learned counsel for the Insurance Company submits that the learned Tribunal has also erred in not deducting the income tax that would be payable by the Claimant on his salary. He submits that taking the salary of the Claimant to be Rs.33,200/- per month, the Claimant would fall in the income tax slab of 10% and, therefore, from his determined income, 10% amount should have been deducted towards income tax.

9. On the other hand, the learned counsel for the Claimant, while not denying that a deduction towards income tax should have been made by the learned Tribunal, submits that the deduction has to be made after giving the benefit of the standard deduction, as provided under the Income Tax Act, 1961, to the Claimant.

10. I agree with the submissions made by the learned counsel for the Claimant. While the learned Tribunal has erred in not



deducting the income tax amount from the income of the Claimant, at the same time, for making such deduction, the standard deductions that a salaried employee is entitled to claim from his gross income, have to be taken into account. Accordingly, the Impugned Award shall stand modified to the above extent.

Challenge regarding Conveyance and Medical Allowance

11. The third challenge of the Insurance Company to the Impugned Award is the inclusion of the conveyance and the medical allowance that was reflected in the pay slip of the Claimant as being received from the Employer. The learned counsel for the Insurance Company, placing reliance on the judgment of the Supreme Court *Kalpanaraj and Ors. v. Tamil Nadu State Transport Corpn.*, (2015) 2 SCC 764; and of this Court in *Asha Devi & Ors. v. Oriental Insurance Co. Ltd.*, 2015 SCC OnLine Del 7114, submits that allowances like the travelling allowance, which are incidental to employment, ought to have been deducted from the income of the Claimant.

12. On the other hand, the learned counsel for the Claimant, placing reliance on the judgment of the Supreme Court in *Sunil Sharma & Ors. v. Bachitar Singh & Ors.*, (2011) 11 SCC 425; and of this Court in *The Oriental Insurance Co Ltd. v. Kamlesh Kumari & Ors.*, 2016 SCC OnLine Del 1289, submits that for determining the income, the Court has to consider not



only the pay package that the employee carries home at the end of the month, but also other perks which are beneficial to the members of the entire family. Therefore, allowances like the travel allowance and the medical allowance cannot be deducted from the income of the injured/Claimant.

13. I have considered the submissions made by the learned counsels for the parties. The pay slips produced on record before the learned Tribunal shows that the Claimant was being paid conveyance allowance of Rs.800/- per month and medical allowance of Rs. 1250/- per month. It is not shown by the Insurance Company that these allowances required the Claimant to actually spend any amount on such heads. These were clearly the benefits that the Claimant took home from the employer irrespective of any expenditure incurred by him on these heads. These were not incidental to the employment, but emoluments received by the Claimant for his employment and for his service.

14. In *Sunil Sharma & Ors.* (Supra), the Supreme Court, placing reliance on the earlier judgment in *National Insurance Co. Ltd. v. Indira Srivastava & Ors.*, AIR 2008 SC 845, has held that having regard to the change in societal conditions, the Court must consider the question of determination of the income not only having regard to the pay package the employee carries home at the end of the month, but also other perks which are beneficial to the members of the entire family. The Court



held that taking into account the said principle, payments made on account of house rent allowance, medical allowance, etc., are to be added to the income of the deceased/injured. The same view has been expressed by this Court in its judgment in ***Kamlesh Kumari & Ors.*** (Supra).

15. In ***Kalpanaraj and Ors.*** (Supra), the issue of deducting the amounts received by an employee as travelling allowance etc., was not in issue. In fact, the Supreme Court held that in that case, the High Court had erred in making deductions under various heads and taking into account only the net income instead of ascertaining the gross income of the deceased therein. The said judgment, therefore, is not relevant to the issue in hand.

16. In ***Asha Devi & Ors.*** (Supra), though the Court held that the amount received by the employee towards conveyance allowance deserves to be deducted, it is not evident from the judgment whether the amount received in that case was as a reimbursement or as a monthly perk. The Judgment in ***Sunil Sharma & Ors.*** (Supra) was also not drawn to the notice of the High Court.

17. In view of the above, I find no merit in the challenge of the Insurance Company on this account.

Challenge regarding determination of Functional Disability

18. The next challenge of the Insurance Company to the Impugned Award and the corresponding challenge of the



Claimant thereto is on account of the functional disability of the Claimant being determined by the learned Tribunal in the Impugned Award as 75%.

19. The learned counsel for the Insurance Company submits that the Claimant, at the time of the accident, was working as a Team Leader with the employer. He submits that the claimant's job being a desk job, the injury suffered by the Claimant being only in the lower limbs, the functional disability could not have been taken as 75% as the disability was only in relation to the lower limbs.

20. On the other hand, the learned counsel for the appellant submits that looking into the nature of the injury suffered by the Claimant, the functional disability should have been assessed at 100%. He submits that it had been proved on record that due to the injury suffered, the Claimant had to, in fact, resign from his job and that itself in turn proves the entire loss of income suffered by the Claimant due to the accident.

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

22. In ***Raj Kumar v. Ajay Kumar and Another***, (2011) 1 SCC 343, on the question of determination of functional disability in case of permanent disability suffered by the Claimant, the Supreme Court has held that the Tribunal should ascertain the actual extent of permanent disability of the Claimant based on the medical evidence and also determine



whether such permanent disability has affected or will affect the Claimant's earning capacity. For this purpose, 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. The second step is to ascertain his avocation, profession and the nature of work before the accident, and also his age. The third step is to find out whether the Claimant is totally disabled from earning any kind of livelihood or whether in spite of the permanent disability, the Claimant could still effectively carry on the activities and functions which he was earlier carrying on before the accident occurred, and whether by the injury suffered he is prevented or restricted from discharging his previous activities and functions, however, at the same time can carry out some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

23. In the present case, the injury suffered by the Claimant has been reproduced hereinabove. The Claimant has proved that due to the injury suffered, he had to resign from his employment. The Claimant was aged about 33 years and was working as a Team Leader with a travel company. His job would clearly require him to travel and be more presentable. At the same time, with the injury suffered, it cannot be said that the plaintiff would be unable to carry out any vocation or earn a livelihood. Keeping in view the above circumstances, the



assessment of the learned Tribunal of the Claimant's permanent disability at 75%, therefore, cannot be faulted. The challenge of the Claimant and the Insurance Company, therefore are not accepted on this account.

Challenge regarding compensation under the head of 'Loss of enjoyment of life and amenities' & 'pain and suffering'

24. The further challenge of the Insurance Company as also the Claimant to the Impugned Award is on account of the compensation awarded in favour of the Claimant for '*loss of enjoyment of life and amenities*' and '*pain and suffering*'. While the learned counsel for the Insurance Company, placing reliance on the judgment of the Supreme Court in ***Raj Kumar*** (Supra), submits that once the loss of income of the Claimant has been determined taking 75% as functional disability, only a token or nominal amount can be awarded in favour of the Claimant under the head of loss of enjoyment of life and amenities and for pain and suffering.

25. On the other hand, the learned counsel for the Claimant, placing reliance on the judgment of this Court in ***Shriram General Insurance Co. Ltd. v. Neetu Lodhi & Ors.***, 2019 SCC OnLine Del 12310, submits that in the said case, though the functional disability was determined at 100%, compensation of Rs.3 lacs each was awarded towards mental and physical shock, and pain and suffering and towards loss of enjoyment of life and amenities. He submits that this judgment on the above



aspect was approved by the Supreme Court vide its judgment dated 11.07.2023 passed in Civil Appeal No. 4360-61/2023.

26. The learned counsel for the Claimant further places reliance on the judgment of this Court in **Ashok Kumar v. M/s Viva International & Anr. (IFFCO Tokio General Insurance Co Ltd.)**, 2023 SCC OnLine Del 1308, to submit that in the said case as well, though the functional disability was taken as 100%, amount of Rs.2 lacs was awarded towards loss of enjoyment of life and amenities.

27. I have considered the submissions made by the learned counsels for the parties. In **Raj Kumar** (Supra), the Supreme Court on the award under the head of loss of amenities has observed as under:-

“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.”

28. Therefore, there is no hard and fast rule that in every case where the functional disability has been assessed at more than 50%, no amount can be awarded on the heads of loss of amenities or pain and suffering. Each case has to be determined



on its own facts. In the present case, as noted hereinabove, from the injuries that have been suffered by the Claimant, his age, and the fact that he had to resign from his job, the award on the head of loss of enjoyment of life and amenities at Rs.1 lac and of an equivalent amount towards pain and suffering, by the Tribunal are found reasonable and are upheld.

Challenge regarding Attendant Charges

29. The Claimant challenges the Impugned Award also insofar as it restricts the compensation on account of attendant charges to Rs. 50,000/- only. The learned counsel for the Claimant, placing reliance on the judgment of this Court in *Ashok Kumar* (Supra), submits that compensation towards attendant charges need to be enhanced taking into account the minimum wages for an unskilled worker and also the fact that the Claimant would require an attendant throughout his life to support him. He submits that as the Claimant expired in the year 2021, attendant charges at least till that date should have awarded by the learned Tribunal.

30. On a query from this Court, if any evidence was lead before the learned Tribunal on the Claimant having incurred any expenses on the attendant, he admits that no such evidence was produced before the learned Tribunal. The Claimant had suffered 'post traumatic Paraparesis with fracture D3' due to the accident. The learned counsel for the Claimant has not drawn my attention to any evidence that would suggest that the



Claimant was unable to perform his daily work without the help of an attendant.

31. In absence of any such evidence, in my view, the learned Tribunal has awarded a reasonable amount in favour of the Claimant on this head and the Award, therefore, does not deserve any interference.

Challenge regarding Grant of Interest at the rate of 10% per annum

32. The last challenge of the Insurance Company to the Impugned Award is to the grant of interest at the rate of 10% per annum on the awarded amount in favour of the Claimant. Placing reliance on the judgment of this Court in *National Insurance Co. Ltd. v. Yad Ram and Ors.*, 2023 SCC OnLine Del 1849, the learned counsel for the Insurance Company submits that taking into account the bank rate of interest relevant to the year of the accident, interest of not more than 6% per annum should have been granted in favour of the Claimant.

33. On the other hand, the learned counsel for the Claimant submits that the interest awarded by the Impugned Award is reasonable and deserves no interference of this Court.

34. In *Yad Ram and Ors.* (Supra), this Court taking into account the rate of interest as was prevalent on the date of the accident therein, had held the Claimants therein to be entitled to



receive interest at the rate of 7.5% per annum. The learned counsels for the parties agree that in the year 2013, that is, around the period when the accident had taken place, the rate of the interest was between 8.75% and 9.10%. Keeping in view the above, the rate of interest awarded by the learned Tribunal is found to be excessive and is reduced to 9% per annum. The Impugned Award shall be modified to the above extent.

35. As various heads of the compensation awarded in the Impugned Award have been modified by the present order, the parties, that is, the Insurance Company and the Legal Heirs of the Claimant, shall appear before the learned Tribunal on 29th August, 2023. The learned Tribunal shall re-determine the compensation payable to the Claimant/his Legal Heirs in accordance with its Award as modified by the present order. The awarded amount shall be released to the Claimant/his Legal Heirs in accordance with the schedule as prescribed in the Impugned Award. In case any excess amount is found to have been deposited by the Insurance Company, such excess amount along with proportionate interest thereon, shall be released to the Insurance Company.

36. The appeals and the pending application are disposed of in the above terms.

NAVIN CHAWLA, J

JULY 20, 2023/rv/am

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 27.07.2023

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MAC.APPs. 454/2017 & 588/2018