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

Date of decision: 10.08.2023

+ **MAC.APP. 508/2016 & CM APPL. 24380/2016**

NATIONAL INSURANCE CO LTD

..... Appellant

Through: Mr.Arihant Jain, Adv. for
Ms.Shantha Devi Raman, Adv.

versus

PAWAN KUMAR & ORS

..... Respondents

Through: Mr.Vikash Bharti, Adv. for R-
1.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. The present appeal has been filed by the appellant challenging the Award dated 01.04.2016 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, New Delhi District, Patiala House Courts, New Delhi (hereinafter referred to as the 'Tribunal') in MACP No. 50/2016 titled *Pawan Kumar v. Jaswant Singh & Ors.*

2. On 14.10.2011, at about 01:00 PM, the respondent no.1 along with Shri Bijender Singh, on hearing the noise of some accident, approached the road near Grover Petrol Pump, Village Bhokhra, PS Nahianwala, Bhatinda, and saw that an accident had occurred between a truck and a bus. While the respondent



passengers to deboard from the bus, all of a sudden a truck bearing no.PB-03U-7545 (hereinafter referred to as the 'offending vehicle') being driven in a rash and negligent manner came and hit the bus from its back side, as a result of which, the accidental bus moved ahead and the respondent no.1 came under the bus. The respondent no.1 was moved to the Civil Hospital Bhatinda from where he was referred to the JPN Apex Trauma Centre, AIIMS.

3. In the said accident, the respondent no.1 suffered permanent physical impairment of 95% with respect to his left upper limb and the right lower limb.

4. The learned Tribunal, in its Impugned Award, has also recorded that the respondent no.1 remained admitted in the JPN Apex Trauma Centre, AIIMS from 15.10.2011 to 24.11.2011 and was diagnosed as RTA with injury left arm with axillary artery thrombosis with fracture clavicle with fracture 1st Rib and C7 transverse process with MILD hemopneumothorax with left side brachial plexus injury with fracture HOFFA's fracture right femur with dislocation of the knee joint, and that the respondent no.1 has been operated five times.

Functional Disability taken as 100%:

5. Dr.Adarsh Kumar, Additional Professor, Forensic Medicine and Chairman of the Disability Medical Board (hereinafter referred to as 'PW-2') was examined before the learned Tribunal as PW-2. He stated that the respondent no.1

has a total permanent physical impairment of 95% with respect



to the left upper limb and the right lower limb. He further stated that the respondent no.1 cannot do any work with his left hand and his disability over the last two years has increased from 90% to 95% with an increase in stiffness in the right knee, which has become permanent in nature. He stated that the respondent no.1 will not be able to walk in a normal manner, cannot squat, and would face difficulty in discharging his routine activities like using the washroom. He further stated that there was no scope of improvement even if the respondent no.1 takes physiotherapy.

6. The learned Tribunal, taking into account the principles laid down by the Supreme Court in ***Raj Kumar v. Ajay Kumar and Another***, (2011) 1 SCC 343 for assessing functional disability, assessed the functional disability suffered by the respondent no.1 at 100%. The first ground of challenge of the appellant to the Impugned Award is on this account.

7. The learned counsel for the appellant submits that as the respondent no.1 has suffered 95% permanent disability only with respect to his left upper limb and the right lower limb, therefore, the functional disability should have been assessed at a lower percentage.

8. I am unable to agree with the submission made by the learned counsel for the appellant. In *Raj Kumar* (Supra), the Supreme Court has held as under:

“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 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.

14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred per cent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of "loss of future earnings", if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not be found suitable for discharging the duties attached to the post or job which he



was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity.

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16. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular, the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to "hold an enquiry into the claim" for determining the "just compensation". The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the "just compensation". While dealing with personal injury cases, the Tribunal should preferably equip itself with a medical dictionary and a handbook for evaluation of permanent physical impairment (for example, Manual for Evaluation of Permanent Physical Impairment for Orthopaedic Surgeons, prepared by American Academy of Orthopaedic Surgeons or its Indian equivalent or other authorised texts) for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view the First Schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen.

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19. We may now summarise the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

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(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).

(iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."

9. In the facts of the present case, the nature of the injury suffered by the respondent no.1 has been described hereinabove. PW-2 in his statement has also stated that the permanent disability, in fact, had increased over a period of two years. PW-2 has further stated that the respondent no.1 would even find it difficult to discharge his routine activities like using the washroom and that there is no scope of any improvement in his condition even if the respondent no.1 takes physiotherapy. In my view, therefore, the learned Tribunal has rightly assessed the functional disability of the respondent no.1 as 100% in view

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of and while applying the principles laid down by the Supreme Court in ***Raj Kumar*** (Supra).

Compensation for Pain and Suffering and Loss of Amenities of Life:

10. The learned counsel for the appellant submits that the learned Tribunal has also erred in awarding Rs.4,00,000/- compensation to the respondent no.1 towards pain, and suffering and also Rs.1,00,000/- towards amenities of life. Placing reliance on the judgment of the Supreme Court in ***Raj Kumar*** (Supra), he submits that once the functional disability has been assessed at 100%, the need to award compensation separately under the head of loss of amenities or towards pain or suffering, cannot be justified.

11. I am unable to agree with the submission made by the learned counsel for the appellant. In ***Abhimanyu Partap Singh v. Namita Sekhon and Another***, (2022) 8 SCC 489, the Supreme Court held that the compensation can be assessed under the pecuniary heads like loss of future earnings, medical expenses including the future medical expenses, attendant charges etc., as also under the non-pecuniary heads for mental and physical shock, pain and sufferings in the present and in future, loss of amenities of life, including loss of marital bliss, loss of expectancy in life, inconvenience, hardship, discomfort etc. The Supreme Court, while considering a similar case where the injured therein had suffered injuries in the lower limb, which was completely paralysed, while upper limb was partially



paralysed, and the functional disability was assessed at 100%, observed as under:-

“26. Under the head "non-pecuniary damages", the claimant has faced the pain, suffering and trauma as a consequence of injuries. It is to observe that to award compensation under the head "pain, shock and suffering", multiple factors are required to be considered from the date of accident, which include the prolonged hospitalisation and regular medical assistance, nature of the injuries sustained, the operations underwent and the consequent pain, discomfort and suffering. Simultaneously, he has to suffer post-accident agony for whole life, including the amenities of life, which he can enjoy as a normal man but unable to do so on account of permanent disability. In the era of competition, he can perform better as a normal man but is unable to compete with others. Therefore, under the head "pain, shock and suffering", amount of compensation deserves to be granted.

27. The MACT awarded Rs 4,00,000 in the head of loss of expectation of life, loss of marital bliss, total loss of enjoyment of life and amenities of life, permanent disability, pain and sufferings while the High Court granted the same amount bifurcating it in the head of loss of amenities in life and marital bliss to Rs 3,00,000 while special diet Rs 1,00,000 making the total Rs 4,00,000.

28. Considering the facts and circumstances of the case and nature of injuries in our considered opinion, the appellant is entitled for a sum of Rs 4,00,000 in the head of loss of amenities of life and marital bliss, pain and sufferings, loss of enjoyment and loss of expectancy; Rs 1,00,000 as awarded by the High Court is maintained in the head of special diet. Thus, in the non-pecuniary heads,



the compensation as determined comes to Rs 5,00,000.”

12. From the above, it is apparent that in spite of assessing functional disability at 100% for determining the loss of income, the Supreme Court awarded Rs.5,00,000/- to the injured therein towards loss of amenities and pain and suffering.

13. In ***Raj Kumar*** (Supra) also, the Supreme Court has held that a token or nominal amount may have to be awarded under the head of loss of amenities, even when the loss of future earning capacity is assessed by taking the functional disability at 100%.

14. In the present case, the learned Tribunal has awarded only a sum of Rs.4,00,000/- towards pain and suffering, and Rs.1,00,000/- towards loss of amenities of life, to the respondent no.1. Looking into the nature of the injury suffered by the respondent no.1, the period of hospitalisation of the respondent no.1, and the medical treatment undergone by him, the same cannot be stated to be unreasonable or exorbitant. The amount of compensation under the said heads, in fact, appears to be nominal. I, therefore, find no merit in the challenge of the appellant on this account.

Attendant Charges and the interest thereon:

15. The learned counsel for the appellant further submits that the learned Tribunal has erred in granting a sum of Rs.5,00,000/- to the respondent no.1 towards attendant charges,



respondent no.1 before the learned Tribunal. He further submits that, in any case, interest could not have been awarded under the said head, as interest cannot be awarded for compensation payable for the future. In support, he places reliance on the judgment of the Supreme Court in ***R.D. Hattangadi v. M/s. Pest Control (India) Pvt. Ltd.***, (1995) 1 SC 551; and of this Court in ***IFFCO Tokio General Ins. Co. Ltd. v. Raja and Others***, 2014 SCC OnLine Del 4375.

16. I am again unable to find any merit in the submission made by the learned counsel for the appellant. The learned Tribunal, while awarding a sum of Rs.5,00,000/- towards attendant charges in favour of the respondent no.1, has observed as under:-

“ATTENDANT CHARGES

32. *The contention of counsel for petitioner is that the petitioner has permanent disabled in the accident and he had incurred expenditure on attendant charges. Petitioner during the course of his deposition has failed to substantiate the amount spent by him on attendant charges. Although the petitioner has not proved by cogent evidence as to who was hired by him as attendant, period of hiring attendant and the amount paid to attendant. However as per disability certificate the petitioner has suffered **95% permanent physical impairment in relation to his left upper limb and right lower limb**. PW2 Dr.Adarsh Kumar who was member of disability board has deposed that the petitioner can not squat and he will have difficulty in discharging his routine activities like using of washroom. Thus looking at the nature of disability and deposition of PW2 notice can be taken of the fact that the petitioner will require assistance of attendant*



*for his daily routine work. Moreover, the petitioner has to be compensated for the gratuitous services rendered by his family members. Reliance is placed on **United India Insurance Company Ltd. Vs. Rama Swamy &Ors., MAC App, No. 328/11**. In view of the aforesaid, in my view, a sum of **Rs.Five Lacs** would be just and proper towards attendant charges and the same is awarded accordingly.”*

17. The learned Tribunal has rightly held that taking into account the injury suffered by the respondent no.1, he would require the assistance of an attendant for his daily routine work. This may be in the form of hired help or even in the form of gratuitous services rendered by his family members. Either way, the respondent no.1 has to be compensated for the same.

18. In **Abhimanyu Partap Singh** (Supra), the Supreme Court, in fact, determined the compensation payable for attendant charges on the basis of the minimum wages notified and by applying the multiplier method. Judged by that standard, the Award of only Rs.5,00,000/- towards attendant charges to the respondent no.1 can by no stretch be said to be unreasonable or unwarranted.

19. As far as the award of interest on the said amount is concerned, as noted hereinabove, the accident had taken place on 14.10.2011. The Award was passed by the learned Tribunal on 01.04.2016, that is, almost after four and a half years thereafter. The respondent no.1 would have required assistance all along, during this period. In my view, Rs.5,00,000/- can be



attributed to the *pendente lite* period alone. Therefore, the said amount is not for the future but for the past, and would, therefore, bear interest liability as well.

Offending Vehicle being driven without Driving Licence, Permit and Fitness Certificate:

20. The learned counsel for the appellant submits that in the present case, the learned Tribunal has found that the offending vehicle was being driven without a valid driving licence, permit and even without a fitness certificate. He submits that the learned Tribunal has, however, directed the appellant to pay the compensation amount to the respondent no.1, while reserving a right in the appellant to recover the same from the respondent nos. 4 and 5. He submits that in the absence of the above documents, the entire liability to pay the compensation should have been fastened only on the respondent nos.4 and 5 and the appellant should have been absolved of the same.

21. I find no merit in the above challenge. The Supreme Court, interpreting Section 149 of the Motor Vehicle Act, 1988, as it stood then, in *National Insurance Co. Ltd. v. Swaran Singh and Others*, (2004) 3 SCC 297, has held that the Insurance Company must pay the compensation first and thereafter recover the same from the driver/owner of the offending vehicle. Therefore, the Insurance Company cannot escape its liability only on the ground that the vehicle was being driven without a valid driving licence, permit, or fitness certificate. Needless to state that the rights of the appellant to



recover the compensation from the respondent nos.4 and 5 shall remain unaffected by this order.

Interest on Compensation:

22. The last challenge of the appellant is to the award of interest at the rate of 9% per annum by the learned Tribunal in the Impugned Award. The learned counsel for the appellant, placing reliance on the judgment of this Court in *National Insurance Co. Ltd. v. Yad Ram and Ors.*, 2023 SCC OnLine Del 1849, submits that the rate of interest should be reduced in view of the prevailing rate of interest for the subject period.

23. I have checked the prevailing rate of interest during the period 2010-11 and 2011-12; it was ranging from 8.25% to 9.25% per annum on the fixed deposit. In that view of the matter, no infirmity is found on the learned Tribunal awarding 9% per annum rate of interest on the compensation as awarded by the Impugned Award.

24. However, the learned Tribunal has also directed payment of penal interest of 12% per annum in case the awarded amount is not deposited by the appellant herein within a period of 30 days. The awarded amount was deposited by the appellant with this Court pursuant to the order dated 19.07.2016 of this Court. In that view of the matter, the stipulation of penal interest in case of default of the appellant shall not be applicable.

CONCLUSION:

25. The appeal is disposed of in the above terms. There shall be no order as to costs.



26. The amount deposited by the appellant shall be released to the respondent no.1 by the Registrar General of this Court in accordance with the schedule prescribed in the Impugned Award by the learned Tribunal, with all payments that would have become due and payable as on the first release being made pursuant to the present judgment, being released immediately to the respondent no.1.

27. The statutory amount deposited by the appellant be returned to the appellant along with interest accrued thereon.

NAVIN CHAWLA, J

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