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

Date of decision: 16.10.2023

+ MAC.APP. 633/2018
UNIVERSAL SOMPO GEN INS CO LTD Appellant
Through: Mr.Mohd. Mustafa, Adv.

versus

SUMIT & ORS Respondents
Through: Mr.S.N. Parashar, Adv. for R-1.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. The appellant challenges the Award dated 02.04.2018 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, Rohini, Delhi (hereinafter referred to as the 'Tribunal') in MACT Case no. 4944/16 (Old No. 431/11), titled ***Master Sumit v. Parmeshwar Kumar & Ors.***

2. The above Claim Petition was filed by the respondent no.1 herein claiming compensation for the injury suffered by him in the motor vehicular accident which took place on 30.10.2010.

3. It was the case of the respondent no.1 that on 30.10.2010 at about 4:20 p.m., he alongwith his friend Gaurav, was going on a bicycle and upon reaching Sector-5, DSIDC, Near Police Booth, Bawana, Delhi, all of a





sudden, a truck bearing registration no. HR-38M-1386 (hereinafter referred to as the 'Offending Vehicle'), being driven in a rash and negligent manner, came and hit the bicycle. As a result thereof, they both fell down on the road and sustained injuries. As far as the respondent no.1 is concerned, he was initially admitted in Maharishi Balmiki Hospital, from where he went to Maharaja Agrasen Hospital, Punjabi Bagh. He remained on bedrest for about eight months due to the injuries sustained by him.

4. The learned Tribunal described his injury from the Discharge Summery as under:

"..Blunt trauma abdomen with large hemoperitoneum & Retroperitoneal Hematoma with liver laceration, left sided pleural effusion, fracture sacrum, fracture left inferior public rami, shearing injury right gluteal region with hematoma and shearing injury left gluteal region with avulsion flap with necrosis due to the accident in question. He is also shown to have sustained permanent disability to the tune of 25% in relation to both lower limbs..."

Loss of Future Income

5. The learned counsel for the appellant submits that the learned Tribunal has erred in awarding compensation towards loss of future income to the respondent no.1. He submits that since the respondent no.1 was aged about 14 years and was studying in a school, there was no basis for the learned Tribunal to award loss of future income to the respondent no.1, and the same should have been awarded only for a notional amount.

6. I find no merit in this challenge of the appellant.

7. In ***Oriental Insurance Company Ltd. v. Master Anshu Kumar @ Bhola & Ors***, 2023:DHC:6241, this Court after considering various precedents on this issue, has held as under:





“18. Even otherwise, ‘loss of income’ is a manner of determination of compensation payable to the victim of a motor vehicle accident, which appears to the learned Tribunal to be ‘just’. Instead of hazarding a guess on each case, without any objective criteria for determining the compensation which is found to be ‘just’, various methods have been adopted by Courts to determine the compensation payable. I do not see any reason why the settled principles/methodology should not be adopted even in case of a child of tender age suffering an injury in a motor vehicle accident.

19. In Rajendra Singh (supra), the Supreme Court was considering an appeal against an Award passed by the Motor Accidents Claims Tribunal, with the appeal against the Award being dismissed by the High Court, which had determined the notional income of a child aged 12 years at Rs. 36,000/- per annum. The Supreme Court found the said determination to be fair in the facts of the said case.

20. In Master Shaurya & Ors. (supra), recently, another learned Single Judge of this Court has held that in Rajendra Singh (supra), the Supreme Court has not laid down any such principle that the notional income of a minor, who dies in a motor accident, should always be taken as Rs.36,000/- per annum. The Court held that the notional income cannot be an abstract figure but has to be fixed by the learned Tribunal taking into consideration the facts and circumstances of each case. The court refused to interfere with the Award passed by the learned Tribunal therein, fixing the notional income of the deceased child therein, aged about 9 years, at Rs. 50,982/- per annum.

21. The above judgments, therefore, have not laid down the basis on which notional income in case of a child is to be determined by the Tribunal, but have on facts of those cases, held that the notional income determined by the learned Tribunal did not warrant any interference.





22. On the other hand, the Supreme Court in *Kajal v. Jagdish Chand & Ors.*, (2020) 4 SCC 413, has held as under: -

“Loss of earning

20. Both the courts below have held that since the girl was a young child of 12 years only notional income of Rs 15,000 p.a. can be taken into consideration. We do not think this is a proper way of assessing the future loss of income. This young girl after studying could have worked and would have earned much more than Rs 15,000 p.a. Each case has to be decided on its own evidence but taking notional income to be Rs 15,000 p.a. is not at all justified. The appellant has placed before us material to show that the minimum wages payable to a skilled workman is Rs 4846 per month. In our opinion, this would be the minimum amount which she would have earned on becoming a major. Adding 40% for the future prospects, it works to be Rs 6784.40 per month i.e. 81,412.80 p.a. Applying the multiplier of 18, it works out to Rs 14,65,430.40, which is rounded off to Rs 14,66,000.

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Attendant charges

22. The attendant charges have been awarded by the High Court @ Rs 2500 per month for 44 years, which works out to Rs 13,20,000. Unfortunately, this system is not a proper system. Multiplier system is used to balance out various factors. When compensation is awarded in lump sum, various factors are taken into consideration. When compensation is paid in lump sum, this Court has always followed the multiplier system. The multiplier system should be followed not only for determining the compensation on account of loss of income but also for determining the attendant charges, etc. This system was recognised by this Court in *Gobald Motor Service Ltd. v. R.M.K. Veluswami*, AIR 1962 SC 1. The multiplier system factors in the inflation rate, the rate of interest payable on the lump sum award, the longevity of the claimant, and also other issues such as the uncertainties of life. Out of all the various alternative methods, the multiplier method has been recognised as the most realistic and reasonable method. It

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ensures better justice between the parties and thus results in award of “just compensation” within the meaning of the Act.

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24. This Court has reaffirmed the multiplier method in various cases like MCD v. Subhagwanti, AIR 1966 SC 1750, U.P. SRTC v. Trilok Chandra (1996) 4 SCC 362, Sandeep Khanuja v. Atul Dande (2017) 3 SCC 351. This Court has also recognised that Schedule II of the Act can be used as a guide for the multiplier to be applied in each case. Keeping the claimant's age in mind, the multiplier in this case should be 18 as opposed to 44 taken by the High Court.”

(Emphasis supplied)

23. In Master Ayush v. The Branch Manager, Reliance General Insurance Co. Ltd. &Anr., (2022) 7 SCC 738, the Supreme Court has again awarded compensation towards loss of income in the case of a 5 year old victim of the road accident, by placing reliance on the minimum wages notified in the State of Karnataka, as was applicable in that case.

24. In Minor Roopa v. The Divisional Manager, New India Assurance Company Ltd., Civil Appeal No.5069 of 2022 decided on 03.08.2022, the Supreme Court again relied upon and assessed the compensation based on the minimum wages notified by the State of Karnataka in that case.

25. In Baby Raksha & Ors. (Supra), this Court, placing reliance on the judgment of the Supreme Court in Kajal (Supra), has held as under: -

“15. In my view, in a case of a child, as the actual income or potential thereof cannot be determined, the minimum wages as notified and applicable on the date of accident would give a reasonable basis for determination of the income of the child. There can, however, be no hard and fast rule laid for this purpose. It would depend on a case-to-case, and for various circumstances, it can be shown as to why reliance on the Notification of the





minimum wages may not be an appropriate method. However, in the present case, no such exceptional circumstance has been pointed out either by the appellant or the respondent no.1.”

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26. In view of the above decisions of the Supreme Court and of this Court, in my opinion, the most reasonable basis for determining the loss of income, even in the case of a minor, would be the minimum wages notified by the State Government where the minor resides at the time of the accident.”

8. In the present case, the learned Tribunal has observed that due to the injuries suffered, the respondent no.1 would not be able to effectively do or to perform any job or activity requiring field work, travelling, driving or even a job which might require him to stand for a long duration. He can only perform those jobs wherein he is required to discharge his duty while sitting. The learned Tribunal has therefore considered the functional disability with respect to the whole body as 25%. The learned Tribunal has also relied upon the minimum wages notified for a non-matriculate for determining the loss of income.

9. I find no infirmity in the above method for determining “just compensation” in favour of the respondent no.1.

Pain and suffering, Loss of General Amenities and Enjoyment of life

10. The next challenge of the learned counsel for the appellant to the Impugned Award is on an amount of Rs.2 lac being awarded by the learned Tribunal to the respondent no.1 towards pain and suffering and another sum of Rs.2 lac towards loss of general amenities and enjoyment of life.

11. Placing reliance on the judgment of the Supreme Court in **Master**





Mallikarjun v. Divisional Manager, the National Insurance Company Ltd. & Anr, (2014) 14 SCC 396, the learned counsel for the appellant submits that only a consolidated amount of Rs.3 lac should have been granted on the above heads.

12. I again find no merit in the said contention.

13. In ***Master Mallikarjun*** (supra), the Supreme Court has held that though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs is to be awarded.

14. In ***Kajal v. Jagdish Chand and Ors.*** (2020) 4 SCC 413, the Supreme considered the above judgment and emphasised that one of the factors which must be kept in mind while assessing the compensation in a case of a permanent disability suffered by a child is that the claim can be awarded only once. The claimant cannot come again to the Court seeking enhancement of the Award at the later stage praying that something extra has been spent. While awarding compensation, the Court must not only take the physical disability but also the mental disability and other various factors into account.

15. The nature of injury suffered by the respondent no.1 has been mentioned above. As noted, the respondent no.1 was confined to bed for a period of eight months due to the injuries suffered. For a child of young age of 14 years, the respondent no.1 would have suffered enormous pain as a result of the injury and would continue to suffer loss of general amenities and enjoyment of life for the rest of his life. Keeping in view his tender age and the disability that he will suffer for his remaining life, in my opinion, the





amount of Rs.4 lac awarded by the learned Tribunal towards pain and suffering, loss of general amenities and enjoyment of life, cannot be said to be unreasonable and exorbitant.

Conclusion & Direction

16. In view of the above, I find no merit in the present appeal. The same is accordingly dismissed.

17. The appellant vide order dated 13.07.2018, was directed to deposit the awarded amount along with interest with the learned Tribunal. By the subsequent order dated 08.10.2018, 50% thereof was directed to be released in favour of the respondent no.1.

18. As the appeal stands dismissed, the remaining amount shall also be released in favour of the respondent no.1 as per the schedule of disbursal prescribed by the Impugned Award.

19. The statutory amount deposited by the appellant be released to the appellant alongwith interest accrued thereon.

NAVIN CHAWLA, J

OCTOBER 16, 2023/Arya/am

