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

Date of Decision: 01.09.2023

+ **MAC.APP. 802/2018**

SUMER

..... Appellant

Through: Mr.Anshuman Bal, Adv.

versus

NATIONAL INS CO LTD & ORS

..... Respondents

Through: Mr.Shyam Singh Yadav, Adv. for
R-1.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed by the injured/claimant challenging the Award dated 02.06.2018 passed by the Motor Accidents Claims Tribunal-02, West District, Tis Hazari Courts, Delhi (hereinafter referred to as 'Tribunal') in MAC Petition No.76251/2016, allowing the Claim Petition filed by the appellant and awarding a compensation of Rs.8,26,000/- in favour of the appellant along with interest @ 9% per annum from the date of filing of the Detailed Accident Report (in short, 'DAR'), that is, 26.05.2014, till its realization.
2. The appellant is aggrieved by the amount awarded in his favour as compensation and seeks enhancement thereof.



**PERMANENT DISABILITY TO BE TAKEN INTO
ACCOUNT FOR DETERMINATION OF 'LOSS OF
FUTURE EARNING ON ACCOUNT OF PERMANENT
DISABILITY'**

3. The first challenge of the appellant to the Impugned Award is that though the Disability Certificate produced by the appellant stated that the appellant has suffered 50% permanent disability in relation to the left upper and left lower limb, and his sensory loss to the left upper and left lower limb at 20%, and his combined physical (motor) disability and Sensory Disability was assessed at 59% in relation to his whole body, the learned Tribunal has awarded compensation in favour of the appellant by taking his physical disability to be 50% in relation to his whole body.
4. The learned counsel for the appellant submits that the appellant had been able to prove on record that he was working as a driver of a motor vehicle, that is, TATA Canter (LMV), at the time of the accident. He was also having a licence for driving heavy goods vehicle. He submits that the nature of injury suffered by the appellant was proved through the testimony of Dr.Vineet Gupta (PW-4), who stated that due to the physical disability suffered by the appellant, he would not be able to perform action involving movements of left upper and left lower limb and that the appellant is also having amnesia.
5. The learned counsel for the appellant submits that, therefore, in terms of the judgments of the Supreme Court in *Raj Kumar v. Ajay*



Kumar & Anr. (2011) 1 SCC 343; and *Parminder Singh v. New India Assurance Co. Ltd. & Ors.* III (2019) ACC 1 (SC), the permanent disability suffered by the appellant should have been taken as 100%.

6. On the other hand, the learned counsel for the respondent no.1 submits that no fault can be found with the finding of the learned Tribunal of taking the permanent disability suffered by the appellant at 50%. He submits that the Disability Certificate as also the testimony of PW-4 showed that the appellant has suffered permanent disability in relation to his whole body at 59%. It is not stated that because of the injury suffered, the appellant cannot do any other vocation.
7. I have considered the submissions made by the learned counsels for the parties.
8. The Disability Certificate issued to the Appellant, is quoted as under:

“CERTIFICATE FOR THE PERSONS WITH DISABILITIES

This is to certify that Sh. Sumer, Age 26 Years /Male, S/o Sh. Bjender, R/o Village & Post – Pakasma, I. Sampla, Distt. Rohtak, Harayana, is a case of Moderate left side hemiparesis left upper & left lower limb. His physically (motor) disability is 50% (fifty percent) Permanent in relation to left upper & left lower limb. His sensory loss left upper limb & left lower limb is 20% (twenty percent) original report from JPSSH attached. His combined physical (motor) disability & Sensory disability as done by JPSSH Neurology department is 59% (fifty nine Percent) Permanent in relation to his whole body.”



9. Dr. Vineet Gupta (PW4), in his deposition, has stated as under:
as under:-

“I have brought the summoned record of permanent disability of Sh. Sumer. I have also seen the original permanent disability certificate lying in the judicial file, which is already Ex PW1/3 bearing my signatures at point A. I also identify signatures of Dr. Satish Chetal, MS of the Hospital who has countersigned my report at B. The patient Sh. Sumer was examined by me being alone member of the medical Board constituted by the MS of the Hospital to assess his disability. As per my report Sh. Sumer Kumar is having physical motor disability is 50%, permanent in relation to left upper and left lower limb, his sensory loss left upper limb and left lower limb is 20%. His combined physical motor and sensory disability is to the extent of 59% permanent in relation to his whole body. Due to physical disability of left upper and left lower limb he should not perform action involving movements of left upper and left lower limb. Patient is having amnesia (loss of memory).

XXXX by S. C. Sharma, Counsel for respondent no. 3, Insurance Co.

It is correct that patient was not examined for the purpose of treatment of injury by the Board. As a Board, we do not examine the cause of Injury and disability.”

(Emphasis supplied)

10. From the Disability Certificate issued to the appellant, as also the testimony of PW-4, it is proved that the appellant has suffered 50% permanent disability in relation to his left upper and lower limb. He has also suffered sensory loss in the left upper and left lower limb as 20%, and his combined physical and sensory disability is to the extent of 59%, permanent in relation to his whole body. PW-4 has



also opined that due to the physical disability of the left upper and left lower limb, he should not perform action involving movements of left upper and left lower limb. He is also suffering from amnesia (loss of memory).

11. In **Raj Kumar** (supra), the Supreme Court, specifically giving the example of where the claimant/injured is a driver and suffers a permanent disability, though in nature of amputation of the left hand, opines that the permanent disability of the injured should be taken as a loss of earning capacity at 100%.
12. In the present case, though the appellant has not suffered amputation of his limb, the result of injury suffered is almost the same, and he has been advised not to perform action involving movements of his left upper and left lower limb.
13. In **Parminder Singh** (supra), the Supreme Court, considering the case of a claimant who had suffered from hemiplegia due to which his left side of the body was barely functioning, assessed the same at 100% functional disability.
14. The case of the appellant herein is even graver. The learned Tribunal, however, in the Impugned Award has, without giving any cogent reasons, reduced the functional disability suffered by the appellant to 50%. I may quote the observations of the learned Tribunal, as under:-

“21. To prove that the petitioner sustained permanent physical disability, he examined Dr.Vineet Gupta, Specialist Surgeon, Guru Gobind Singh Govt. Hospital, Delhi as PW-4. PW-4/Dr.Vineet Gupta had examined the petitioner and assessed physical disability as the sole



Member of the Medical Board constituted by Medical Superintendent. He issued disability certificate (Ex.PW1/3) in respect of petitioner Sumer. As per Permanent Disability Certificate (Ex.PW1/3), petitioner Sumer was found to be suffering from permanent physical motor disability of 50% in relation to left upper and left lower limb. PW4 also deposed that the petitioner was also found suffering sensory loss left upper limb and left lower limb to the extent of 20%. Hence, his combined disability was to the extent of 59% in relation to his whole body.

22. Considering the documents, vocation of petitioner and evidence on record, permanent physical disability of the petitioner is assessed as 50% in relation to his whole body.”

15. I cannot agree with the above finding of the learned Tribunal.
16. Applying the ratio of the judgments of the Supreme Court in **Raj Kumar** (supra) and **Parminder Singh** (supra), the functional disability of the appellant has to be and is considered at 100%.

CHALLENGE TO THE DETERMINATION OF INCOME OF THE APPELLANT

17. The next challenge of the appellant to the Impugned Award is on his income being assessed on the basis of the minimum wages notified by the State of Haryana for semi-skilled worker.
18. The learned counsel for the appellant submits that, before the learned Tribunal, the appellant had produced Mr.Sandeep (PW-2), his employer. PW2, in his affidavit, had deposed that the appellant was working as a driver with him and used to draw a salary of Rs.10,000/- per month. The learned Tribunal in spite of this



evidence, proceeded to award compensation in favour of the appellant by placing reliance on the minimum wages as notified by the State of Haryana.

19. Placing reliance on the judgment of the Supreme Court in ***Parminder Singh*** (supra), the learned counsel for the appellant submits that once there is proof of actual income drawn by the claimant, the income must be determined on that basis.
20. On the other hand, the learned counsel for the respondent no.1 submits that the learned Tribunal has rightly considered the minimum wages notified by the State of Haryana for a semi-skilled worker for determining the loss of income of the appellant due to the accident. He submits that no fault can be found in the same.
21. I am unable to agree with the submission made by the learned counsel for the respondent no.1.
22. In the Impugned Award, the learned Tribunal does not give any cogent reason for not believing the testimony of PW-2, who had stated that the appellant was working as a driver with him, drawing a salary of Rs.10,000/- per month. I may reproduce the relevant finding of the learned Tribunal on this issue, as under:-

“20. It was claimed by the petitioner in his evidence that at the time of accident, he was working as a driver and earning Rs.10,000/- per month. To prove his vocation and earning, petitioner examined his employer Sandeep as PW-2. PW-2/Sandeep in his evidence by way of affidavit (Ex.PW2/A) deposed that petitioner Sumer was working as a driver with him and he used to pay Rs.10,000/- per month as salary. In his claim petition, petitioner has mentioned his vocation as driver. In the Accident Information Report annexed with the DAR (Ex.PW1/4),



petitioner Sumer gave his residential address as Distt. Rohtak, Haryana. Also, PW2/Sandeep, employer of the petitioner Sumer in his affidavit of evidence mentioned his address as that of Distt. Rohtak, Haryana. Hence, petitioner is considered as semi-skilled worker (This category includes the jobs for which prescribed qualifications is less than Matriculation but require some specified work experience or a certificate/diploma course of one year or less duration) and his income is assessed as per Minimum Wages Rate prevailing in Haryana at the time of accident. Accordingly, his income is assessed as Rs.5,472/- per month. Hence, loss of income of petitioner during the period of treatment would be Rs.5,472 x 04 = Rs.21,888-. Hence, he is entitled to a compensation of Rs.21,888/- (Rupees Twenty One Thousand Eight Hundred Eighty Eight) under this head.”

23. In presence of proof of actual salary drawn by the appellant, the reliance of the learned Tribunal on the minimum wages notified by the State of Haryana was not justified.
24. In ***Parminder Singh*** (supra), the Supreme Court has also held that where the actual income of the claimant has been proved, compensation has to be assessed on that basis. I may quote from the judgment of the Supreme Court, as under:

“5. We find that the MACT has computed the compensation payable to the Appellant on the basis of a notional income of Rs. 6,000/- p.m. on the ground that no evidence of his income was produced.

5.1. The Appellant has however, produced an Affidavit by his employer in this Court. As per the said Affidavit, the Appellant was earning Rs. 10,000/- p.m. at the time of the accident.

5.2. On the basis of the Affidavit filed by the employer of the Appellant, we accept that the



income of the Appellant was Rs. 10,000/- p.m. at the time of the accident, for the purpose of computing the compensation payable to him.”

25. In view of the above, the impugned Award, in-so-far as it assesses the income of the appellant as Rs. 5,472/- per month, based on the Minimum Wages for a semi-skilled worker notified by the State of Haryana, is modified. The pecuniary damages of the appellant, that is, the ‘Loss of earning during the period of treatment’ and ‘loss of future earning on account of permanent disability’ shall be re-computed taking the salary of the appellant as Rs. 10,000/- per month.

THE PERIOD OF TREATMENT TO BE TAKEN INTO ACCOUNT FOR AWARD OF ‘LOSS OF EARNING DURING PERIOD OF TREATMENT’

26. The next challenge of the appellant to the Impugned Award is qua the period for which the compensation on account of ‘loss of earning during the period of treatment’ has been awarded by the learned Tribunal.
27. The learned counsel for the appellant submits that before the learned Tribunal, it had been proved that the appellant had been repeatedly hospitalized and his period of treatment had extended to almost 9 months. In spite of this evidence, the learned Tribunal has considered the period of treatment as only four months for awarding ‘loss of earning during the period of treatment’ in favour of the appellant.
28. On the other hand, the learned counsel for the respondent no.1



submits that the claim of the appellant that the period of treatment had continued for nine months has not been established. He submits that there was no continuous period of hospitalization of the appellant. His medical expenses have also been awarded separately on basis of the actual bills produced by the appellant.

29. I have considered the submission made by the learned counsel for the parties.
30. The learned Tribunal in the Impugned Award, while awarding the compensation on the head of 'loss of earning during the period of treatment' has observed as under:

"19. According to the treatment record placed on record by petitioner Sumer, he was removed to Mission Hospital on 17.09.2013 immediately after the accident and was referred to AIIMS Trauma Centre on 18.09.2013 for further management. He was further admitted to JPN Apex Trauma Centre on 19.09.2013 and discharged on 01.10.2013. He was again admitted to JPN Apex Trauma Centre on 29.01.2014 and discharged on 30.01.2014. Petitioner also remained under OPD treatment from 22.10.2013 to 20.05.2014. Hence, the period of loss of earning during the treatment is reckoned as 04 months."

31. I find no reason to disagree with the above finding of the learned Tribunal.
32. As is evident from the above reading of the finding of the learned Tribunal, the appellant had remained hospitalized till 01.10.2013, that is, for a period of less than one month. Thereafter, he was again admitted in the hospital for two days in January, 2014. Between 22.10.2013 to 20.05.2014, he had remained under OPD treatment.



The learned Tribunal has also separately awarded the loss of future income to the appellant. The same has also been enhanced by this judgment. I, therefore, see no reason to interfere with the finding of the learned Tribunal, as far as the period for which the appellant has been held entitled to claim 'loss of earning during the period of treatment'. The appeal, in-so-far as this challenge is concerned, is dismissed.

ON THE AWARD OF ATTENDANT CHARGES

33. The appellant challenges the Impugned Award in-so-far as it awards compensation of only Rs.10,000/- to the appellant towards attendant charges.
34. The learned counsel for the appellant submits that looking into the nature of the injury suffered by the appellant, the appellant would require an attendant. He submits that the family members of the appellant are looking after the appellant, however, that cannot be a reason for denying the compensation to the appellant towards the attendant charges.
35. On the other hand, the learned counsel for the respondent no.1 submits that, in fact, the appellant had not claimed any amount towards the attendant charges in the Claim Petition, nor had the same been proved. The appellant has also been granted Rs.75,000/- for pain, suffering and trauma, and Rs.50,000/- towards amenities. He submits that, therefore, there is no justification for enhancing the compensation payable towards the attendant charges.
36. I have considered the submissions made by the learned counsels for



the parties.

37. Keeping in view the nature of injuries suffered by the appellant, it cannot be said that the appellant would require a permanent attendant. At the same time, he would certainly require some help on a regular basis, especially because of the amnesia suffered by him, as also because of hemiplegia suffered in his left upper and lower limb. The compensation awarded to the appellant of only Rs.10,000/- towards attendant charges, therefore, appears to be highly inadequate. Though, the appellant may be taking the services of his own family members, who may be performing the same gratuitously, compensation should still be awarded in favour of the appellant for the contribution made by the family members. Accordingly, the compensation on account of the attendant charges is enhanced to Rs.2 lakhs.

CHALLENGE TO THE AWARD OF NON-PECUNIARY DAMAGES

38. The learned counsel for the appellant further challenges the amount of compensation awarded towards pain, suffering and trauma, and loss of amenities. He places reliance on the judgment of the Supreme Court in ***Jakir Hussein v. Sabir & Ors.***, 2015 (2) TAC 692 (SC), to seek enhancement thereof.
39. The learned counsel for the respondent no.1, on the other hand, reiterates that adequate compensation has already been awarded in favour of the appellant and there is no reason for enhancement.
40. I have considered the submissions made.
41. In ***Jakir Hussein*** (supra), the Supreme Court, considering the case



of the claimant who was also working as a driver at the time of the accident and who had suffered severe compound fractures in his right arm preventing him from performing his regular work as a driver, had awarded Rs.1,50,000/- to the claimant therein towards pain, suffering and trauma, and a further sum of Rs.1,50,000/- towards lost of amenities and enjoyment of life and happiness.

42. In my view, the above judgment is squarely applicable to the facts of the present case as well. Accordingly, the compensation awarded to the appellant towards pain, suffering and trauma is enhanced to Rs.1,50,000/-; and the compensation awarded towards the loss of amenities shall also stand enhanced to Rs.1,50,000/-.
43. In view of the above, the total compensation amount awarded in favour of the appellant is re-computed as under:-

S.No.	Heads	Amount
1.	Expenses relating to treatment, hospitalization and medicines	36,624/-
2.	Conveyance	10,000/-
3.	Food (Special Diet)	20,000/-
4.	Attendant Charges	2,00,000/-
5.	Loss of earning during the period of treatment	Rs. 10,000/- x 4 = Rs. 40,000/-
6.	Loss of future earning on account of permanent disability	Rs.10,000/- + 50% x 12 x 18 x 100 = Rs.32,40,000
7.	Future Medical Expenses	Nil
8.	Pain, Suffering & Trauma	Rs. 1,50,000/-
9.	Loss of Amenities	Rs. 1,50,000/-
	Total	Rs. 38,46,624/- rounded off to Rs. 38,47,000/-

44. The above amount shall carry interest @9% per annum from the



date of filing of the DAR, that is, 26.05.2014 till its realization.

45. The respondent no.1 shall deposit the enhanced amount with the learned Tribunal within a period of eight weeks from today. The compensation amount as also the enhanced amount shall be released in favour of the appellant in accordance with the schedule of disbursement prescribed in the Impugned Award.
46. The appeal is disposed of in the above terms.

NAVIN CHAWLA, J

SEPTEMBER 1, 2023
RN/rp