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

Date of decision: 12.07.2023

+ MAC.APP. 69/2017

ASHOK KUMAR

..... Appellant

Through: Mr.Jatinder Kamra, Adv.

versus

PAPPU YADAV & ORS (TATA AIG GENERAL
INSURANCE CO LTD)

..... Respondents

Through: Ms.Vandana Kahlon, Mr.Rudra
Kahlon, Advs. for R-3.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed challenging the Award dated 04.04.2016, as modified by the order dated 02.06.2016, passed by the learned Motor Accidents Claims Tribunal, Karkardooma Courts, East District, Delhi (hereinafter referred to as the 'Tribunal') in MAC No.244/2016, titled *Sh.Ashok Kumar Sahu v. Sh. Papu Yadav & Ors.* seeking enhancement of the awarded amount of compensation.

2. It is the case of the appellant that on the intervening night of 20-21.10.2012, the appellant, who is a petty pickle maker, had taken a vehicle, that is, TATA Magic Truck bearing registration No.DL-1LR-6951 (hereinafter referred to as the 'offending vehicle') on rent for going to Hodel from Khoda Colony, and loaded Pickle containers in the offending vehicle for supplying them to different suppliers. The



appellant sat on the conductor seat in the offending vehicle alongwith the Driver- Pappu Yadav, that is, the respondent no.1 herein. It is the case of the appellant that, in spite of request by the appellant not to do so, the respondent no.1 was driving the offending vehicle at a high speed and in a rash manner. When the offending vehicle reached near Hodel Palwal Road, the offending vehicle hit a stationary Truck parked ahead, causing serious injuries to the appellant. A case under Sections 279/338 of the Indian Penal Code, 1860 vide FIR no.451/2012 at Police Station Sadar Palwal was registered against the respondent no.1.

3. Based on the evidence led by the parties before the learned Tribunal, the learned Tribunal found that the accident happened as a result of negligent driving of the respondent no.1 due to which the appellant received grievous injuries.

4. As far as the compensation is concerned, the learned Tribunal, by way of the Impugned Award, found that the appellant had been unable to file any evidence on record in support of his claim of loss of earnings. In absence of such evidence, the learned Tribunal determined the income of the appellant for awarding compensation as only Rs.7,254/- per month based on the minimum wages prevalent at that time.

5. The first challenge of the appellant to the Impugned Award is on this account. The learned counsel for the appellant submits that the learned Tribunal has failed to award any amount to the appellant towards the future prospects. Placing reliance on the judgment of the



Ors., (2017) 16 SCC 680, he submits that as it had come on the record that the injured was self-employed and was aged about 43 years, therefore, an addition of 25% was to be made on account of future prospects, which the learned Tribunal failed to do.

6. I find merit in the above submission of the learned counsel for the appellant. In **Pranay Sethi** (supra), the Supreme Court has *inter-alia* held as under:

“59.4 In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.”

7. The learned Tribunal has clearly erred in not awarding the future prospects at 25% of the income in favour of the appellant, especially where it could not be disputed that the appellant was self-employed as a pickle maker and was aged about 43 years.

8. The Impugned Award shall stand modified and the compensation enhanced accordingly.

9. The second challenge of the appellant is to the award of a sum of only Rs.60,000/- as compensation to the appellant towards pain, shock and suffering. The learned counsel for the appellant submits that looking into the nature of the injuries suffered, the same is highly inadequate.

10. On this claim, the learned Tribunal has observed as under:



“19. The Petitioner is entitled for the compensation on account of Pain & Sufferings he underwent due to his accidental injuries. From the nature and severity of injuries, the treatment underwent by the Petitioner and from the overall assessment of the circumstances, I assess an amount of Rs.60,000/- as compensation, towards Pain, Shock and Suffering to the Petitioner.”

11. The learned counsel for the appellant submits that the appellant had suffered permanent disability of 41% in relation to his left lower limb. It was proved on record that he was admitted in the hospital at Shri Ganga Ram Hospital at New Delhi (hereinafter referred to as SGR Hospital), and thereafter had to take further consultations from the said Hospital. The appellant had sustained fracture of right frontal bone depressed fracture with Metatarsal Dislocation due to fracture, crush injuries on left leg, left foot, right thigh with cut wound and had to undergo operation at SGR Hospital with K-wire screw fixation and external fixator applied to left tibia with open reduction on 22.10.2012. He submits that therefore, the compensation awarded towards the pain and suffering deserves to be enhanced.

12. On the other hand, the learned counsel for the respondent no.3 submits that the learned Tribunal has rightly awarded a sum of Rs.60,000/- to the appellant under this head. He submits that there is no reason for this Court to take a different view.

13. I am unable to agree with the submission made by the learned counsel for the respondent no.3. In the Impugned Award, the nature of the injury suffered and the medical treatment undergone by the appellant is described in paragraph 15 thereof, which is reproduced as



under:

“15. PW-1 testified that on 20.10.2012, he was initially taken to Government Hospital, Palwal and B.K.Hospital Faridabad. He was then, referred to Sir Gangaram Hospital, Delhi on 21.10.2012 and remained admitted there till 05.11.2012. However, there is no Treatment Record having filed by the Petitioner after 05.11.2012 except some OPD Cards from SGR Hospital. The Petitioner sustained fracture of right frontal bone depressed fracture with Metatarsal Dislocation due to fracture, crush injuries on left leg, left foot, right thigh with cut wound. The clinical summary shows that he underwent operation at SGR Hospital with K-wire screw fixation done and external fixator applied to left tibia with open reduction on 22.10.2012. The post operative period remained uneventful and he was advised to continue follow up with Dr.Anshul Gupta. The Petitioner because of injuries, suffered 41% of Permanent Disability in relation to his Left lower limb. Dr. Brijesh Jain, Junior Specialist (Orthopaedics) from LBS Hospital was examined as PW4 for proving the Disability Certificate of the Petitioner.”

14. Clearly, the appellant, due to the accident has suffered grave pain and injury. Not only was he hospitalized for more than two weeks, but had to undergo an operation with K-wire screw fixation done and external fixator applied to left tibia with open reduction on 22.10.2012. The permanent injury to his left lower limb was assessed as 41%.

15. I am of the view that while compensation should not be a bounty to the injured, at the same time, it has to be reasonable. Accordingly, taking into account the age of the injured, nature of the

injuries suffered, and overall circumstances, a sum of Rs.1,00,000/-



(Rupees One Lakh) should have been awarded by the learned Tribunal on account of pain and suffering suffered by the appellant.

16. The Impugned Award shall stand modified to this extent.

17. The third and the last challenge of the appellant to the Impugned Award is to the award of Rs.7,000/- each under the head of special diet and conveyance charges by the learned Tribunal. He submits that keeping in view the injury suffered, the amount awarded is meager and not reasonable.

18. On the other hand, the learned counsel for the respondent no.3 reiterates that in absence of any evidence being led by the appellant, the learned Tribunal has rightly quantified the claim on the above two heads.

19. Before considering the submissions made by the learned counsels for the parties, relevant finding of the learned Tribunal on the above two heads of claim is reproduced as under:

“30. While fixing compensation for loss of amenities of life, the features like the age, marital status and unusual deprivation undertaken by a person in his life are to be reckoned. The Petitioner, however, has not filed anything in support thereof. In his affidavit, the Petitioner stated that he had to spend on taking rich protein diet, on Conveyance and for keeping an attendant. There is nothing on record in support of these facts stated in his affidavit that he had incurred such expenses. The Petitioner is however awarded a lumpsum amount of Rs.7,000/- for Special Diet and Rs.7,000/- for Conveyance Charges.”

20. As noted hereinabove, the appellant has suffered permanent

Disability of 41% to his lower limb. He has also undergone a surgery



as described hereinabove. The same clearly requires a special diet post the surgery in order to give sufficient energy to the appellant to carry on with his vocation. It would also require the appellant to spend additional amount on his conveyance as the injury suffered is on the lower left limb.

21. In my opinion, the appellant has made out sufficient reason for grant of enhancement of compensation payable under the above two heads. Taking into account the nature of injury suffered by the appellant, the amount on account of special diet and conveyance charges payable to the appellant is enhanced to Rs.15,000/- each.

22. The Impugned Award shall stand modified to this extent.

23. The appellant shall also be entitled to interest on the enhanced amounts directed by this order, at the rate as awarded by way of the Impugned Award.

24. The learned counsel for the appellant and the learned counsel for the respondent no.3 submit that the amount as awarded in the Impugned Award stands deposited with the learned Tribunal and has been released in accordance with the schedule prescribed by the learned Tribunal in the Impugned Award.

25. With the present order, the respondent no.3 will have to deposit the additional amounts. For this purpose, the appellant and the respondent no. 3 shall appear before the learned Tribunal on 23.08.2023. The respondent no.3 shall deposit the enhanced amount in terms of the present order and the same shall be released to the appellant in accordance with the direction issued by the learned

Tribunal in this regard.



26. By the Impugned Award, the learned Tribunal has further found that the policy conditions have been violated, and has directed that the respondent no.3 shall be entitled to recover the amount paid under the Award to the appellant from the respondent nos.1 and 2 in accordance with the law.

27. In spite of notice being served on the respondent nos.1 and 2, none has entered appearance for the said respondents. The said respondents have also not filed any separate appeal or cross-objections on the above directions.

28. Accordingly, the above liberty granted to the respondent no.3 to make recovery of the compensation from the respondent nos.1 and 2, shall also be applicable towards the enhanced amount awarded in favour of the appellant and paid by the respondent no. 3 due to the present order.

29. The appeal is allowed in the above terms. There shall be no order as to cost.

NAVIN CHAWLA, J

JULY 12, 2023/Arya/rp

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