



\$~14

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

Date of decision: 16.11.2023

+ **MAC.APP. 809/2017**

RADHEYSHYAM MAURIYA Appellant

Through: Mr.Umesh Kumar, Adv.

versus

SBI GENERAL INSURANCE CO LTD & ORS

..... Respondents

Through: Ms.Pavitra Singh, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CM APPL. 32790/2017

1. This application has been filed by the appellant seeking condonation of 224 days' delay in filing of the appeal.
2. Having perused the contents of the application, I find sufficient ground being made out by the appellant for condoning the delay. Accordingly, the delay in filing the appeal stands condoned.
3. The application stands disposed of.

MAC.APP. 809/2017

4. This appeal has been filed challenging the Award dated 27.10.2016 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, South



East District, Saket Courts, New Delhi (hereinafter referred to as the 'Tribunal') in Suit No. 3656/2016 titled ***Sh. Radheyshyam Mauriya v. Vikash Kumar & Ors.***

5. It was the case of the appellant before the learned Tribunal that on 24.03.2015 at about 4:15 PM, he along with his friend Nanku was going on a motorcycle via Amity University Road, Noida, U.P.. As they reached the T-Point near Ahluwalia Company, Sector 94, UP, a truck bearing registration no. HR63A0229 (hereinafter referred to as the 'Offending Vehicle'), which was being driven by respondent no.2 in a rash and negligent manner and at a high speed, hit the motorcycle of the appellant due to which he fell down and sustained grievous injuries. He was taken to the JPN Apex Trauma Centre, AIIMS, where his right lower limb was amputated. The appellant claimed that he was around 38 years old at the time of the accident and was working as a painter/carpenter with a monthly income of Rs. 25,000/-.

6. Based on the evidence led before the learned Tribunal, the learned Tribunal concluded that the appellant had suffered grievous injuries in the accident caused by the rash and negligent driving of the Offending Vehicle by the respondent no.2 herein. As far as compensation is concerned, the learned Tribunal awarded the compensation to the appellant in the following manner:-

<i>Head of compensation</i>	<i>Amount (in Rs.)</i>
<i>Medicines</i>	5,000/-
<i>Artificial Limb/Prosthetics</i>	2,00,000/-

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 20.11.2023

12:27:40

MAC.APP. 809/2017



Conveyance	10,000/-
Special Diet	10,000/-
Pain, Agony and Psychological Trauma	1,00,000/-
Loss of Earning Capacity	17,75,000/-
Loss of Amenities of Life	1,00,000/-
Attendant Charges	15,000/-
Total	22,15,000/-

No compensation awarded towards Future Prospects of Income

7. The learned counsel for the appellant submits that the learned Tribunal has erred in not awarding compensation towards future prospects of income.

8. I find merit in the said challenge.

9. In terms of the judgment of the Supreme Court in ***Lalan D. alias Lal and Anr v. Oriental Insurance Company Ltd.*** (2020) 9 SCC 805, even in case of permanent disability, future prospects of income have to be taken into account while awarding compensation.

10. As would be discussed later in the present judgment, the age of the appellant was 33 years at the time of the accident, and he was self employed. In terms of the judgment of the Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and Others***, (2017) 16 SCC 680, therefore, the appellant is entitled to compensation by taking the future prospects as 40%. It is directed accordingly.

Wrong assessment of Permanent Disability

11. The next challenge of the appellant to the Impugned



Award is on the assessment of permanent disability with respect to the whole body being made by the learned Tribunal as only 50%. The learned counsel for the appellant submits that as the appellant was working as a painter/carpenter, the injury has caused a substantial loss of his earning capacity and, therefore, the assessment of permanent disability towards the whole body should be increased.

12. On the other hand, the learned counsel for the respondent no.1 submits that as per the own evidence of the appellant, he is working with a group of 10-12 people and his income has, in fact, increased post the accident. She submits that, therefore, the assessment of permanent disability towards the whole body has been rightly made by the learned Tribunal.

13. I am in agreement with the submission made by the learned counsel for respondent no.1. As recorded by the learned Tribunal in the Impugned Award, the appellant is working with a group of 10-12 people and admittedly his income post the accident has, in fact, increased. Even otherwise, keeping into account the nature of the work and the injury suffered by the appellant, and applying the principles as set down by the Supreme Court in *Raj Kumar v. Ajay Kumar & Anr.*, (2011) 1 SCC 343, I find no infirmity in the assessment made by the learned Tribunal. Accordingly, this challenge of the appellant stands rejected.

Double deduction towards the disability suffered

14. The learned counsel for the appellant, drawing reference



of this Court to paragraphs 31 and 32 of the Impugned Award, submits that there has been a double deduction in the income of the appellant by the learned Tribunal while awarding compensation.

15. I have considered the submission made.

16. Paragraphs 31 and 32 of the Impugned Award are reproduced hereinbelow:-

“31. Petitioner has admitted in his cross-examination that he was working with a group of 10-12 persons. He has admitted that his income was increased after his accident. Petitioner had a group of 10-12 persons for work and there is nothing on record to show that he stopped working. However, considering the fact that he suffered permanent physical impairment to the extent of 90%, it can reasonably be accepted that he had suffered loss of earning capacity to the tune of 50%. Thus, 50% of Rs.2,62,358/- is to be considered for the assessment of loss of earning capacity which is Rs.1,31,179/-.

32. Petitioner was aged about 33 years at the time of accident as per Aadhar Card Ex. PW-1/1. However, he himself has claimed in his petition as well as affidavit of evidence that he was aged about 38 years at the time of accident. Appropriate multiplier applicable for the age of 38 years is 15. Thus, petitioner is awarded a sum of Rs. 17,70,916.5 (Rs.1,31,179/- X 15 X 90/100), which is rounded off to Rs.17,75,000/- towards loss of earning capacity.”

(Emphasis supplied)

17. From the above, it is apparent that the learned Tribunal first determined loss of income of the claimant as 50% and deducted the same from his annual income. The learned



Tribunal then applied the multiplier to this income and awarded compensation for only 90% of the same. There is no reason for awarding only 90% of the income based on the multiplier method. The same cannot be sustained. Once the learned Tribunal had arrived at a conclusion that the appellant had suffered the loss of earning capacity to the tune of 50% of his income, only the same could have been taken into account while assessing his loss of income. The learned Tribunal in addition has further deducted 10% of his income by taking his permanent disability as 90%. The Impugned Award shall stand modified to this extent.

Attendant Charges

18. The next challenge of the appellant to the Impugned Award is on a sum of Rs.15,000/- being awarded towards attendant charges. The learned counsel for the appellant submits that looking into the nature of the injury suffered by the appellant, the attendant charges need to be enhanced.

19. On the other hand, the learned counsel for respondent no.1 submits that there was no evidence of any attendant being hired by the appellant. Even otherwise, it has come on record that the appellant continued to work even post the accident and his income has, in fact, increased. She further submits that looking into the nature of the injury suffered by the appellant, the appellant would not require any attendant.

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



21. In the present case, the learned Tribunal, while opining that the appellant would have required an attendant for a period of 3 months, has proceeded to award compensation of Rs.15,000/- towards attendant charges to the appellant at the rate of Rs. 5000/- per month . The learned Tribunal has also observed that the appellant has, in fact, gone back to work and his income has increased post the accident. There is also no evidence of the appellant having employed any attendant to look after him. On an overall appreciation of evidence, I find no infirmity in the Award of the learned Tribunal on this account.

Wrong age of appellant taken to determine the multiplier

22. The last challenge of the appellant to the Impugned Award is on the ground that the learned Tribunal adopted the multiplier based on the age of the appellant as 38 years. The learned counsel for the appellant, while drawing my reference to the Pan Card, the Driving Licence, and the Aadhaar Card of the appellant, which formed a part of the record of the learned Tribunal, submits that the appellant was aged around 33 years at the time of the accident. He submits that by mistake, the appellant in his petition and the evidence by way of affidavit has stated his age as 38 years. He submits that the appellant cannot be made to suffer for this typographical error.

23. On the other hand, the learned counsel for respondent no.1 submits that as it was appellant's own case that he was 38 years old at the time of the accident, therefore, no fault can be



found in the Impugned Award.

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

25. In the Pan Card, the Driving Licence, and the Aadhaar Card of the appellant, his date of birth is mentioned as 10.06.1982. The accident had taken place on 24.03.2015, meaning thereby that the appellant was aged around 33 years at the time of the accident. For a mere typographical error in his petition and the affidavit of evidence, wherein he has stated his age as 38 years, the appellant cannot be made to suffer and denied compensation which is just and reasonable.

26. Accordingly, it is directed that the age of the appellant to determine the multiplier shall be taken as 33 years. As per the judgment of the Supreme Court in *Sarla Verma v. Delhi Transport Corporation and Anr.* (2009) 6 SCC 121, the appropriate multiplier of 16 shall be applied for the purposes of computing the compensation payable to the appellant towards the loss of earning capacity.

27. In view of the above, the compensation payable to the appellant is re-worked as under:-

S.No.	Particulars	Amounts
1.	Medicines	Rs.5000/-
2.	Artificial Limbs/Prosthetic	Rs.2,00,000/-
3.	Conveyance	Rs.10,000/-
4.	Special Diet	Rs.10,000/-
5.	Pain, Agony & Psychological Trauma	Rs.1,00,000/-

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 20.11.2023

12:27:40

MAC.APP. 809/2017



6.	Loss of Earning capacity	Rs.1,31,179x140/ 100= Rs.1,83,650.6 (Rounded off to Rs.1,83,650) Rs.1,83,650x16= Rs.29,38,400/-
7.	Loss of amenities of life	Rs.1,00,000/-
8.	Attendant Charges	Rs.15,000/-
	Total	Rs.33,78,400/-

28. The enhanced compensation shall carry interest at the rate of 9% per annum from the date of filing of the Claim Petition before the learned Tribunal till the deposit thereof by the respondent no.1 with the learned Tribunal.

29. The enhanced compensation along with interest so deposited, shall be released in favour of the appellant in a lump sum manner.

30. The appeal is disposed of in the above terms.

31. There shall be no order as to costs.

NAVIN CHAWLA, J

NOVEMBER 16, 2023/rv/am

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 20.11.2023

12:27:40

MAC.APP. 809/2017