



2023: JWC: 0320



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

Reserved on: 07.11.2023
Pronounced on: 21.11.2023

+ **MAC.APP. 1014/2018 & CM APPL. 8978/2023**

UNITED INDIA INSURANCE CO LTDAppellant
Through: Mr.Pradeep Gaur and Ms.Sweta
Sinha, Advocates
versus

NUPUR JAIN & ORS Respondents
Through: Mr.Navjot Kwatra, Advocate
for R-1

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. This appeal has been filed challenging the Award dated 18.08.2018 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, Shahdara District, Karkardooma Courts, Delhi (hereinafter referred to as the 'Tribunal') in MAC no.770 of 2016 titled ***Nupur Jain v. Rahul & Ors.***
2. It was the case of the claimant before the learned Tribunal that on 25.03.2013 at about 08.30 p.m., the claimant /injured, Ms.Nupur Jain, along with her friend, Yamini Katyan, was going on her scooty bearing registration no. DL-13SG-9844 from the Cross River Mall towards Vivek Vihar. While passing through the traffic light near Suraj Mal Vihar, Transport Authority, Delhi, a motor cycle bearing registration no. DL-7SAM-5177 (hereinafter



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referred to as the ‘Offending Vehicle’), being driven in a rash and negligent manner and without observing traffic rules, hit the scooter of the Claimant. Due to the accident, the claimant suffered multiple grievous injuries. She was first rushed to the Pushpanjali Hospital, from where she was referred to the Pushpanjali Crosselay Hospital. After initial treatment, she was referred to the MAX hospital, where she remained under treatment for 5-6 days. Later, on 01.04.2013, she was referred to the Indraprastha Apollo Hospital and four brain surgeries were performed upon her, the last one was performed on 30.09.2013. There was no improvement in her condition and she had lost her vision in her right eye, while the vision of her left eye deteriorated. She suffered six fractures in the skull and remained hospitalized and under treatment for a long term.

3. The claimant was aged 20 years and was pursuing a professional course of Chartered Accountancy at the time of the accident.
4. The learned Tribunal, on appreciation of the evidence led before it, has held that the accident had taken place with the offending vehicle being driven in a rash and negligent manner. The learned Tribunal has awarded the following compensation to the claimant:

1.	<i>Reimbursement of medical expenses:</i>	<i>Rs.16,26,839/-</i>
2.	<i>Pain and Suffering:</i>	<i>Rs.3,00,000/-</i>
3.	<i>Attendant charges for 65 months during pendency of this case + 18</i>	<i>Rs.19,67,000/-</i>



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	<i>years for future (Rs.7,000/- pm):</i>	
4.	<i>Loss of income during treatment period: (2 yrs as per income of Rs.1,05,768/- per annum):</i>	<i>Rs.2,11,536/-</i>
5.	<i>Loss of earning capacity including future due to disability:</i>	<i>Rs.26,65,534/-</i>
6.	<i>Conveyance & special diet present and future:</i>	<i>Rs.2,00,000/-</i>
7.	<i>Compensation for mental and physical shock:</i>	<i>Rs.3,00,000/-</i>
8.	<i>Loss of amenities in life:</i>	<i>Rs.3,00,000/-</i>
9.	<i>Damages for inconvenience, hardship, discomfort, frustration and disfigurement:</i>	<i>Rs.3,00,000/-</i>
10.	<i>Loss of matrimonial prospects:</i>	<i>Rs.3,00,000/-</i>
11.	<i>For future expenses:</i>	<i>Rs.1,00,000/-</i>
12.	<i>Loss of Expectation of Life (shortening of normal longevity):</i>	<i>Rs.1,00,000/-</i>
13.	<i>Loss of Study/Education</i>	<i>Rs.2,00,000/-</i>
	Total =	<i>Rs.85,70,909/- (rounded off Rs.85,71,000/-)</i>

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT:

5. The learned counsel for the appellant submits that the compensation awarded is contrary to the judgment of the Supreme Court in ***Raj Kumar v. Ajay Kumar*** (2011) 1 SCC 343. He submits that once the learned Tribunal has awarded compensation towards loss of future earning capacity to the claimant by considering the functional disability suffered to the



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whole body as 100%, further compensation towards loss of amenities could not have been granted, except for exceptional reasons to be recorded.

6. The learned counsel for the appellant submits that even otherwise, the learned Tribunal has erred in awarding compensation on multiple heads leading to duplication of the compensation. He submits that once the learned Tribunal has awarded a compensation of Rs.3 lacs to the claimant towards pain and suffering, there was no occasion for the learned Tribunal to have, in addition, awarded a compensation of Rs.3 lacs towards mental and physical shock; Rs.3 lacs towards inconvenience, hardship, discomfort, frustration and disfigurement; Rs.1 lac towards loss of expectation of life (shortening of normal longevity). He submits that similarly, when the learned Tribunal has already awarded a sum of Rs.3 lacs towards loss of amenities in life, there was no occasion for the learned Tribunal to have further awarded Rs.3 lacs towards loss of matrimonial prospects, and Rs.2 lacs towards loss of study and education. He submits that in this manner, the learned Tribunal has awarded compensation on multiple heads, which in fact are duplication of each other.
7. The learned counsel for the appellant submits that the compensation of Rs.2 lac towards conveyance and special diet is also excessive and has been awarded without there being any evidence for the same.



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8. The learned counsel for the appellant submits that the learned Tribunal has also erred in awarding compensation towards loss of income during the treatment period in addition to the loss of future earning capacity. He submits that once the learned Tribunal has adopted the multiplier method for determining the loss of future earning capacity of the claimant, additional compensation on account of loss of income during the treatment period cannot be awarded. He submits that this would lead to an increase in the multiplier that is prescribed to be adopted dependent on the age of the deceased/injured.
9. He submits that the learned Tribunal has erred in awarding compensation of Rs.19,67,000/- towards the attendant charges. He submits that the claimant had not produced any evidence in support of the above claim; there was no evidence of any attendant being engaged by the claimant or of any expense incurred for the same. He submits that the learned Tribunal for the purposes of assessment of the said claim has wrongly adopted the multiplier of 18 and monthly compensation of Rs.7,000/-.
10. The appellant also challenges the rate of interest awarded as being excessive.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENT NO. 1

11. On the other hand, the learned counsel for the respondent no.1 supports the Impugned Award by contending that the respondent no.1 sustained multiple injuries, including skull fracture, on



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account of which, she underwent lengthy medical procedures and remained hospitalized from 25.03.2013 to 20.08.2013, thereafter from 29.09.2013 to 16.10.2013, and from 09.11.2013 to 14.11.2013, and received treatment up to 27.01.2014. She also underwent multiple brain surgeries and lost vision of her one eye and half vision in the other. She also lost her brain ability, and her cognitive impairment assessed as 75%. He submits that therefore, the compensation awarded by the learned Tribunal is just and reasonable and should not be interfered with.

12. On the specific heads of compensation that are in challenge in the present appeal, he submits that even though the respondent no.1 may have been unable to lead any evidence with respect to an attendant being hired, it cannot be denied that on account of the injuries suffered by the respondent no.1, the family members of the respondent no.1 would have attended on her. He submits that they equally deserve to be compensated for their services. Placing reliance on the judgment of the Supreme Court in **Kajal v. Jagdish Chand and Ors.** (2020) 4 SCC 413, he submits that therefore, the learned Tribunal has rightly taken the minimum wages of an unskilled worker and the multiplier relevant to the age of the respondent no.1, for awarding the attendant charges in favour of the respondent no.1.
13. He submits that the respondent no. 1 underwent long period of treatment. Therefore, the learned Tribunal has rightly awarded loss of income to the respondent no.1 for the period of treatment in addition to the loss of future earning capacity.



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14. On the plea of the appellant of there being duplication of the heads on which compensation has been awarded, the learned counsel for respondent submits that there is no such duplication. He submits that for the injuries that have been suffered by the respondent no.1 as a result of the accident, the learned Tribunal has rightly awarded compensation towards mental and physical shock, loss of amenities of life, and towards inconvenience, hardship, discomfort, frustration and disfigurement. He submits that due to the injuries suffered, there will be a loss of matrimonial prospects for the respondent no.1, who was pursuing the course in Chartered Accountancy, and, therefore, compensation towards loss of matrimonial prospects and loss of study/education have been rightly granted to the respondent no. 1 in addition to the compensation for loss of amenities.
15. Placing reliance on the judgment of the Supreme Court in *Nirupam Mohan v. New India Assurance*, (2013) 14 SCC 15, he submits that the learned Tribunal has rightly awarded compensation towards loss of expectation of life.

ANALYSIS AND FINDINGS

16. I have considered the submissions made by the learned counsels for the parties.
17. As noted hereinabove, as a result of the accident, the claimant sustained multiple injuries, including skull fracture. She remained hospitalized for a long period between 25.03.2013 to 20.08.2013, 29.09.2013 to 16.10.2013, and 09.11.2013 to



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14.11.2013. She underwent multiple brain surgeries during this period, and has lost vision of her one eye while half vision of other eye. She also lost brain ability and her cognitive impairment assessed at 75%. With these injuries, she would be deprived of living a normal healthy life. At the time of the accident, she was aged only about 20 years and was pursuing the course of Chartered Accountancy.

18. PW2, Dr. Promod Kumar Sahu, has proved the Permanent Disability Certificate (Ex.PW2/A) of the claimant, as per which, the claimant had suffered “(I)100% permanent disability in relation to her eyes (II) 75% in relation to mild hemiparesis left and cognitive assessment of 70% from her neurological assessment (which comes to 75 %)”. Disability is of permanent nature. It has also come on record that the claimant was a bright student with excellent co-curricular activities.

Compensation on non-pecuniary heads:

19. The learned counsel for the appellant has submitted that as the permanent disability of the claimant has been assessed as 100% with respect to the whole body, in terms of the judgment of the Supreme Court in ***Raj Kumar*** (supra), she shall not be entitled to any compensation towards the loss of amenities or loss of expectation of life, as the same would result in duplication of compensation. The said challenge cannot be accepted.
20. In ***Raj Kumar*** (supra), the Supreme Court has held that when the compensation is awarded by treating loss of future earning



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capacity as 100% (or even more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result thereof, only a token or a nominal amount has to be awarded towards the loss of amenities or loss of expectation of life, as otherwise there might be a duplication in the award of compensation. However, in *Kajal v. Jagdish Chand & Ors.* (2020) 4 SCC 413, the Supreme Court while considering the case of a bright young girl who suffered from severe incontinence, severe hysteria and above all she was left with a brain of a nine-month-old child, held that it was a fit case where departure has to be made from the normal rule, and the pain and suffering suffered by this child is such that no amount of compensation can compensate. The Court held that while assessing the compensation in a case like the one it was confronted with, it must be remembered that the claim can be awarded only once and claimant cannot come back to the Court for enhancement of Award at a later stage. It was held that therefore, the Court or the Tribunals assessing the compensation in a case of 100% disability, especially where there is mental disability also, should take a liberal view of the matter when awarding compensation. It was held that while awarding compensation in such like cases, the Court shall take into account not only the physical disability but also the mental disability and various other factors into account. The Court held that it must be remembered that the victim cannot enjoy the pleasures of life due to the accident. The Court in that case, therefore, awarded the



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compensation of Rs.15 lac to the claimant for pain and suffering, in addition to the loss of earning, and Rs.3 lac towards loss of marriage prospects.

21. In the present case, the claimant is aged about 20 years. She has suffered a similar kind of disability as in the case of **Kajal** (supra) due to the accident. The permanent disability suffered by her as a result of the accident has been described hereinabove. In my opinion, therefore, she would be entitled to compensation towards the loss of amenities of life, and towards pain and suffering, in addition to the loss of earning capacity. I, therefore, do not find merit in the above challenge of the learned counsel for the appellant.
22. As far as the submission of the learned counsel for the appellant that there has been duplication of the heads on which the compensation has been awarded to the claimant, as noted hereinabove, the learned Tribunal has awarded a compensation of Rs.3 lac to the claimant towards pain and suffering, Rs.3 lac towards compensation for the mental and physical shock, Rs.3 las for loss of amenities of life, Rs.3 lac for inconvenience, hardship, discomfort and frustration and disfigurement, Rs.3 lac towards loss of matrimonial prospects, Rs.1 lac towards loss of expectation of life, and Rs.2 las towards loss of study/education. Though bifurcated into various heads, the compensation is, in fact, in terms of the judgment of the Supreme Court in **Kajal** (supra) which had awarded Rs.15 lacs to the claimant therein towards pain and suffering, and loss of amenities, and Rs.3 lac



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towards loss of marriage prospects. As noted hereinabove, the injuries suffered by the claimant are of similar nature as in case of *Kajal* (supra).

23. For the above reasons, I do not find any reason to interfere with the Impugned Award on the above submission. The above challenge is therefore, rejected.

Conveyance and Special Diet:

24. As far as the challenge of the appellant to the award of compensation of Rs.2 lac towards conveyance and special diet being excessive and as having been awarded without there being any evidence for the same, I again do not find any merit.
25. Keeping in view the injuries that have been suffered and the prolonged period of treatment undergone by the claimant, the compensation awarded cannot be said to be excessive. It goes without saying that for the injuries that the claimant has suffered, it would have been required for her to be taken to the hospital for treatment several times and over a prolonged period; special diet would also have to be prescribed. The compensation awarded is therefore, reasonable and does not warrant any interference from this Court. Claim of compensation is not to be proved beyond reasonable doubt but on the touchstone of preponderance of probabilities. Insistence on meticulous evidence in proof of the claim is not required.
26. This challenge also is therefore, rejected.



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Loss of Future Income and Loss of Earning during treatment period:

27. I do not find any merit in the challenge of the learned counsel for the appellant that once the compensation has been awarded towards loss of future income, compensation towards loss of earning during the treatment period cannot be granted, as this would lead to the adoption of an increased multiplier.
28. In **Kajal** (supra), the compensation towards the loss of earning during the period of treatment in addition to loss of future earnings, was held justified as a family member would have left his/her own job to look after the claimant during the period of treatment. In the said case, therefore, Rs.51,000/- was granted as loss of income during the period of treatment, observing as under:

“21. Though the claimant would have been entitled to separate attendant charges for the period during which she was hospitalised, we are refraining from awarding the same because we are going to award her attendant charges for life. At the same time, we are clearly of the view that the tortfeasor cannot take benefit of the gratuitous service rendered by the family members. When this small girl was taken to PGI, Chandigarh, or was in her village, 2 to 3 family members must have accompanied her. Even if we are not paying them the attendant charges they must be paid for loss of their wages and the amount they would have spent in hospital for food, etc. These family members left their work in the village to attend to this little girl in the hospital at Karnal or Chandigarh. In the



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hospital, the claimant would have had at least two attendants, and taking the cost of each at Rs 500 per day for 51 days, we award her Rs 51,000.”

29. Similarly, in ***Sidram v. United India Insurance Co. Ltd.***, (2023) 3 SCC 439, the Supreme Court has granted compensation under the ‘Loss of earning due to disability’ applying the multiplier method, and simultaneously granted compensation under the head of ‘Loss of earning for 6 months’.
30. I therefore, find no merit in the above challenge of the appellant. The same is rejected.

Attendant Charges:

31. The next challenge of the appellant to the Impugned Award is on the compensation of Rs.19,67,000/- towards attendant charges.
32. As held by the Supreme Court in ***Kajal*** (supra), where the claimant would require an attendant for 24 hours a day, the minimum wages notified by the State Government may provide the best assessment of the amount on which the compensation towards attendant charges are to be awarded by use of the multiplier method. In the present case as well, looking into the nature of the injuries suffered by the claimant, it can be safely presumed that she would require a permanent attendant, even if not being a hired professional, then in form of a family member. Adequate compensation needs to be awarded for the same.
33. I therefore, find no merit in the said challenge. The same is rejected.



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Rate of interest:

34. The last challenge of the appellant to the Impugned Award is to the rate of interest awarded by the learned Tribunal. The learned Tribunal has directed that the compensation awarded shall carry interest at the rate of 9% per annum from the date of filing of the claim petition till the date of realisation of the compensation.
35. The date of the accident is 25.03.2013. The claimant filed the claim petition on 01.08.2013. The impugned Award was passed on 18.08.2018. The appellant, apart from contending that the rate of interest is excessive, has not filed any material in support of this challenge.
36. Keeping in view the above dates, I find the rate of interest awarded to be reasonable and just. I therefore, reject the challenge of the appellant.

Conclusion and Directions:

37. In view of the above, I find no merits in the present appeal. The same is accordingly dismissed. The pending application shall stand disposed of in view of the following directions.
38. This Court by its *interim* order dated 19.11.2018 had directed that subject to the appellant depositing the entire awarded amount with the learned Registrar General of this Court, the operation of the Impugned Award shall remain stayed. It was directed that the amount so deposited shall be converted into interest bearing fixed deposit receipt with automatic renewal. By a subsequent order dated 17.05.2019, on an application filed by the claimant, a sum



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of Rs.20.71 lac was released in favour of the claimant/respondent no.1 alongwith interest accrued thereon, in terms of the scheme of disbursal specified in the Award. Now as the appeal stands dismissed, the balance amount of compensation shall also be released in favour of the respondent no.1/claimant in terms of the scheme of disbursal stipulated in the Impugned Award.

39. The statutory amount deposited by the appellant be returned to the appellant alongwith interest accrued thereon.

NAVIN CHAWLA, J.

NOVEMBER 21, 2023

RN/am

Click here to check corrigendum, if any