



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

% **Judgment reserved on : 29 February 2024**
Judgment pronounced on : 23 April 2024

+ **MAC.APP. 132/2024 & CM APPL. 12682/2024**

THE ORIENTAL INSURANCE CO LTD Appellant
Through: **Mr. A.K. Soni, Adv.**

versus

MS. SEEMA & ORS. Respondents
Through: **None.**

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The appellant/insurance company has preferred this appeal in terms of Section 173 of the Motor Vehicles Act, 1988¹, assailing the impugned judgment-cum-award dated 30.11.2023, passed by the learned Presiding Officer, Motor Accident Claims Tribunal-01, North District, Rohini Courts, Delhi² in MACT No. 467/2017 titled as 'Seema v. Suresh Kumar & Ors.'

2. None appeared for the injured-claimant/respondent No.1 despite advance notice.

3. Having heard the learned counsel for the appellant/insurance company and on perusal of the record, I find that the present appeal is bereft of any merits and rather this Court should *suo motu* enhance the

¹ MV Act

² Tribunal



compensation on some heads of the compensation decided by the learned Tribunal.

FACTUAL BACKGROUND:

4. Shorn of unnecessary details, the injured-claimant/respondent No.1 suffered grievous injuries on 26.08.2016 at about 2.45 p.m. when she was going along with her friend on a motorcycle bearing registration No. DL-8SAL-0734, which was hit by a Haryana Roadways bus bearing registration No. HR-69B-6575³ near Outer Ring Road by-pass Bus Stand, Mukarba Chowk, Jahangirpuri, Delhi. The injured-claimant/respondent No.1, who was about 22 years of age and pursuing her Graduation course in B.A. (Program) from Delhi University, remained under prolonged treatment and the injuries sustained by her in the accident led to amputation of her right arm above the elbow, and the permanent disability was opined to the extent of 85%. She filed a petition against the respondent No.2 Suresh Kumar employed with respondent No.3 i.e. the Office of General Manager, Haryana Roadways, Sonapat, Haryana and the appellant/insurance company under Section 166/140 of the MV Act. Admittedly, the offending bus was insured for third party risk with the appellant/insurance company.

5. First things first, in the present appeal there is no challenge to the findings given by the learned Tribunal on issue No.1 to the effect that it was the driver of the offending bus who was guilty of rash and negligent driving of the offending/insured bus and thereby causing injuries to the injured-claimant/respondent No.1.



6. Learned counsel for the appellant/insurance company has urged that the learned Tribunal has erroneously considered loss of functional disability in relation to the whole body and further, it has allowed Rs. 16,59,200/- for prosthetic limb and maintenance charges, which is a highly arbitrary amount, inappropriate and contrary to the evidence on the record of the case.

7. Perusal of the record shows that the learned Tribunal held that the injured-claimant/respondent No.1 was able to prove that she remained in the Hospital w.e.f. 26.08.2016 to 12.09.2016 and allowed reimbursement of medical bills to the extent of Rs.7,17,650/-. Learned Tribunal, although noticing that no evidence had been led as regards amount spent on special diet, conveyance etc., however, keeping in mind the nature of injuries sustained by the injured-claimant/respondent No.1, period of hospitalization including the surgeries, the procedure undergone upon her and follow-up treatment, it opined that for about six months she must have incurred expenses for intake/consumption of special diet besides travelling to & fro to various hospitals and attendant charges for about six months and accordingly, it awarded a sum of Rs. 25,000/- each towards special diet and conveyance, besides Rs. 36,000/- calculated @ Rs. 6,000/- per month x 6 towards attendant charges. Further, it observed that there was no loss of income as the injured-claimant/respondent No.1 was studying, however, Rs. 15,000/- was awarded towards loss of inconvenience or studies/education.

³ Offending Bus



8. In the said backdrop, learned Tribunal also considered the testimony of PW-2 Dr. Seema and PW-4 Dr. V.K. Aggarwal who substantiated the findings in the disability certificate Ex.PW-2/1 to the effect that the injured-claimant/respondent No.1 had received '85%' permanent disability in relation to her right upper limb. To cut the long story short, learned Tribunal rightly assumed the monthly income of the injured-claimant/respondent No.1 reckoned as per minimum wages of matriculate applicable in Delhi, which was Rs. 11,622/- per month at the relevant time and provided for 40% enhancement of minimum wages of salary as injured-claimant/ respondent No.1 was below 40 years of age and the functional disability was assessed towards full body and thereby it arrived at the compensation of Rs. 29,87,318.88 Paisa⁴.

9. In the case of **Raj Kumar v. Ajay Kumar**⁵ the Supreme Court had an occasion to lay down the parameters for ascertainment of the permanent disability vis-a-vis disability to the whole body of the injured. It was held that when disability certificate states that an injured has suffered permanent disability, to illustrate, 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. In other words, suffice to state that the extent of disability on limb (or part of the body) expressed in terms of percentage of the total function of that limb, obviously cannot be assumed to be the extent of disability of the whole body. Thus, where the claimant suffers permanent disability as a result of injuries, the

⁴ Rs.11,622 + 40 % of 11,622= Rs. 16,270.88 Paisa x 12 x 18 x 85/100.

⁵ (2011) 1 SCC 343



assessment of compensation under the head of ‘loss of future earnings’ or ‘functional disability’ would depend upon the effect and impact of such permanent disability on his/her earning capacity. However, the Supreme Court also observed that having regard to the facts and circumstances of the case, learned Tribunal may yet find that the percentage of loss of earning capacity as a result of permanent disability to be approximately the same as percentage of the permanent disability, in which case, the Tribunal is not precluded from adopting the same percentage for determination of the compensation. Reliance in this regard can be placed on the decision in the case of **Arvin Kumar Mishra v. New India Assurance Compnay Limited**⁶ and **Yadava Kumar v. National Insurance Company Limited**⁷.

10. In view of the aforesaid proposition of law, undoubtedly amputation of right arm/upper limb from the elbow is a case of permanent disability and since the injured-claimant/respondent No.1 in her evidence has brought out that she was a right handed person, it is but manifest that the disability is such that impacts her whole bodily structure, integrity and functioning. The permanent disability is such that it has shut all doors on almost all her future career opportunities and prospects in life that would have involved use of every limb or part of the body to its full capacity. The permanent disability is such that has impaired the capacity of the injured-claimant/respondent No.1

⁶ [(2010) 10 SCC 254] – Held: In some cases for personal injury, the claim could be in respect of lifetime's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum.

⁷ (2010) 10 SCC 341



to use her right hand for writing, doing household chores and other activities that require use of the forelimbs. Therefore, having regard to the young age of the injured-claimant/ respondent No.1, it cannot be said that the learned Tribunal committed any grave irregularity or perversity in considering loss of future earning capacity or functional disability at 85%.

COMPENSATION FOR PROSTHETIC & MAINTENANCE:

11. Insofar as this issue is concerned, it would be apposite to refer to the observations made by the learned Tribunal, which read as under:-

“17. As far as compensation for the purchase and maintenance of prosthetic limb is concerned, petitioner has examined PW-1 Dr. Abhishek Sharma, who proved the treatment record of petitioner vide Ex. PW-1/1 (colly). He deposed that “the case of petitioner Seema was crush amputation right upper limb at arm level, he did re plantation of the amputated right upper limb but it did not work.” Petitioner has also examined PW-3 Ms. Neha, Prosthetist and Orthotist, who proved the estimate cost of Endolite Right Above Elbow Myo Electric Hand System with 2 degree of freedom, Electrode, Battery, Battery Holder, charger, Glove and Socket and Service Charges vide Ex. PW-3/B. Though, PW-1 and PW-3 were cross-examined but nothing material has come on record to disbelieve the testimony of these witnesses as the right hand of the petitioner was amputated and she would be requiring prosthetic limb for her day to day activities. Ld. Counsel for respondent no. 3/Insurance Company has argued that though PW3 brought the quotation/estimate Ex. PW-3/A but she has not brought any rate list for the different components and PW-3 in her cross-examination has admitted that same treatment and components are available in the market at cheaper rates. However, no rebuttal evidence has been brought on record by the respondents in this regard. As per Ex. PW-3/B, the quotation for Endolite Above Elbow Hand System is of Rs. 3,86,400/-. Further, reliance has been placed upon the judgment in **Mohd. Sabeer @ Shabir Hussain vs Regional Manager, U.P. State Road decided on 9 December, 2022 by the Hon'ble Supreme Court of India** wherein it was held as under :-



“As per the current compensation given for the prosthetic limb and its maintenance, it would last the Appellant for only 15 years, even if we were to assume that the limb would not need to be replaced after a few years. The Appellant was only 37 years at the time of the accident, and it would be reasonable to assume that he would live till he is 70 years old if not more. We are of the opinion that the Appellant must be compensated so that he is able to purchase three prosthetic limbs in his lifetime and is able to maintain the same at least till he has reached 70 years of age. For the Prosthetic limbs alone, the Appellant is to be awarded compensation of Rs. 7,80,000 and for maintenance of the same he is to be awarded an additional Rs. 5,00,000/-”.

Similar are the facts of present case, accordingly after considering the ratio of above said judgment and of testimony of PW-3, a sum of Rs. 11,59,200/- (3,86,400x3) is awarded to the petitioner towards artificial / prosthetic limb and a lump sum amount of Rs.5,00,000/- for maintenance charges for the above artificial / prosthetic limb are also awarded to the petitioner, which is amounting a total of **Rs.16,59,200/-**.”

12. At the outset, the aforesaid reasons accorded by the learned Tribunal cannot be faulted on any legal grounds. Learned Tribunal has taken a very pragmatic view of the permanent disability suffered by the injured-claimant/respondent No.1. At the cost of repetition, the injured-claimant/respondent No.1 was aged about 22 years of age and was pursuing her Graduation course and assuming that average longevity of life is about 70 years, the injured-claimant/respondent No.1 has to live a long life as a person with permanent physical disability and she would obviously be requiring artificial/prosthetic limb for her entire life.

13. All said and done, before parting with this case, although the learned Tribunal awarded just and reasonable compensation towards “loss of enjoyment of amenities in life” and “disfigurement” each at Rs. 1,50,000/-, it caught itself on the wrong foot awarding a meagre



sum of Rs. 75,000/- towards mental pain, physical shock as well as pain and suffering, also awarding Rs.1,50,000/- towards loss of marriage prospects that requires to be enhanced *suo motu*, for which reliance can be placed on the judgment passed by this Court ‘United India Insurance Company Ltd. v. Jagat & Ors.’ wherein this Court relied on National Insurance Company Limited v. M. Jayagandhi⁸. We have to understand that we live in a society where injured-claimant/respondent No.1 would find it very difficult to get a suitable marital match and compensation towards loss of marriage should be granted to the extent of Rs. 5,00,000/- and likewise enhancing the amount of compensation towards pain and suffering. Accordingly, the compensation is arrived at as under:-

Sr. No.	Heads of compensation	Amount
1.	Reimbursement of medical expenses	Rs.7,17,650/-
2.	Special Diet	Rs. 25,000/-
3.	Conveyance charges	Rs. 25,000/-
4.	Attendant charges	Rs. 36,000/-
5.	Loss of studies	Rs. 15,000/-
6.	Loss of functional disability	Rs. 29,87,388/-
7.	Prosthetic and maintenance	Rs. 16,59,200/-
8.	Pain and suffering	Rs. 5,00,000/-
9.	Loss of marriage prospects	Rs. 5,00,000/-
10.	Loss of amenities of life	Rs. 1,50,000/-
11.	Disfigurement	Rs. 1,50,000/-
TOTAL:		Rs. 67,65,238/-

⁸ 2008 SCC OnLine Mad 53



14. In the facts and circumstances of the case, the compensation in terms of interest @ 9% from the date of filing of the petition/DAR till realization is not on the higher side.

15. In view of the foregoing discussion, the impugned judgement-cum-award dated 30.11.2023 is hereby modified to the effect that the injured-claimant/respondent No.1 shall now be entitled to a total compensation of Rs. **67,65,238/-** with interest @ 9% from the date of filing of the petition till realization.

16. The amount of compensation be deposited by the appellant/insurance company with the learned Tribunal within four weeks from today, failing which, the appellant/insurance company shall be liable to pay penal interest @ 12% per annum from the date of judgment till realization. On such deposit, the amount of compensation with accrued interest be released to the injured-claimant/respondent No.1 as per directions passed by the learned Tribunal.

17. The present appeal along with the pending application stands disposed of accordingly.

DHARMESH SHARMA, J.

APRIL 23, 2024

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