



2024:DHC:10156



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 12th December, 2024***+ **MAC.APP. 95/2022, CM APPL. 15063/2022 (stay)**

NATIONAL INSURANCE CO. LTD.

.....Appellant

Through: Mr. Manu Luv Shahalia, Advocate.

versus

1. GURMEET SINGH CHADHA
s/o Jaswant SinghRespondent No.1
2. BANWARI LAL
s/o Sh.Ram KhilawanRespondent No.2
3. M/S MAHA LAXMI CEMENT STORE
Through its Proprietor/DirectorRespondent No.3
Through: None

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. The Appeal under Section 173 of the *Motor Vehicles Act, 1988* ('M.V. Act' *hereinafter*) has been filed by the Appellant/Insurance Company, against the Award dated 20.12.2021 *vide* which the compensation in the sum of Rs.24,31,771/- along with the interest @6% p.a. has been granted, on account of injuries suffered by Mr. Gurmeet Singh Chadha Respondent No. 1, aged about 51 years, in the road accident on 11.09.2016.



2. The Insurance Company has challenged the Award, on the following grounds:-

- (i) that the *income of the injured* should have been calculated as per the unskilled Minimum Wages and not as Rs.21,594/-;
- (ii) that there is no proof of the cost of prosthetic, which has been allowed in the sum of Rs.3,50,000/-; and
- (iii) that the interest @6% has been awarded towards the Future Treatment, which is not tenable. The reliance has been placed on Abati Bezbaruah vs. Geological Survey of India, 2003 ACJ 680 (SC).

3. Opportunity given to the Respondents, to address the arguments.

4. **Submissions Heard.**

5. *Briefly stated*, on 11.09.2016 at about 10:45 am, the injured Mr. Gurmeet Singh Chadha along with his associate, was coming back to Delhi from Gaadoli, Gurgaon, Haryana on the Motorcycle bearing No. DL08TC-0026. When they reached at Bikaner Chowk, Near Honda Chowk, Gurgaon, Haryana, a Truck (Dumper) bearing Registration No. HR-55T-3861, driven by the Respondent No. 2, Mr. Banwari Lal, at a very high speed and in a rash and negligent manner, hit the motorcycle with a great force because of which he and the pillion rider fell. His left leg got crushed under the rear tyre of the offending vehicle and he sustained multiple injuries. Both the injured were taken to Sunrise Hospital, Gurgaon, where the MLC was prepared.

6. FIR No. 406/2016 dated 11.09.2016 under Section 279/337/338 *Indian Penal Code, 1908* ('IPC' hereinafter) was registered at Police Station Kherki Daula, Gurugram, Haryana.



7. The learned Tribunal after considering the evidence, granted compensation in the sum of Rs. 24,31,771/- along with interest @6% p.a. to Respondent No.1.

Monthly Income of the Injured:

8. The *first ground of challenge* by the Appellant/Insurance Company, is that the Respondent No. 1 has not been consistent about his monthly income and it should have been calculated on the basis of minimum wages and not as per the salary certificate. He further deposed that he had been filing the Income-Tax Returns since the year 2014 and his Income-Tax Returns for the Assessment year 2015-2016, 2016-2017 and 2017-2018 are exhibited as Ex.PW-1/3 to Ex.PW-1/6.

9. The Respondent No. 1 in his Petition had stated that he was working as a supervisor in *M/s ACE Trading Company* and was getting a salary of Rs.30,000/- per month. In his testimony as PW-1, he has reiterated the same thing. However, in the cross-examination, he further clarified that Mr. Devender Singh is the owner of this Firm. The Respondent No. 1, therefore, has been consistent in his testimony that he has been working as a Supervisor with M/s ACE Trading Company.

10. There is no contradiction in the pleadings and in his cross-examination, as has been conducted on behalf of the Insurance Company.

11. The *second aspect of challenge* is that the Income-Tax Returns for the year 2015-2016, 2016-2017 and 2017-2018, Ex.PW-1/3 to Ex.PW-1/6 reflect that the injured was filing the Income-Tax Returns for the business with the details of Profit and Loss indicated therein. The Income-Tax Returns therefore, are in contradiction to his own testimony that he was



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working as an employee and therefore, no reliance could have been placed on his Income-Tax Returns.

12. It has been rightly pointed out that though according to his testimony, the injured was in employment but the Income-Tax Returns filed are in regard to some business with Profit Losses being declared therein. Pertinently, the e-mail address in the Income Tax Returns has been indicated as that of davinder35@yahoo.co.in. What, therefore, can be concluded is that these Income-Tax Returns, did not pertain to the employment of the Plaintiff.

13. Learned Tribunal had taken an average of the three ITRs, to calculate the monthly income as Rs.21,594/- while these Income-Tax Returns cannot be considered as a basis for calculating the income as it pertains to a business about which the injured has led no evidence and given any explanation. Moreover, there is no actual proof of the salary that the injured was getting from his employer.

14. The big question which arises, is on what principle should the income of the injured be assessed. The injured has proved the Rent Deed Ex.PW-1/7, which reflects that he is living in a rented premises, for which he is paying rent of Rs.12,000/- per month. It has been explained by him in his evidence that he is a permanent resident of Punjab, but has been living in Delhi for employment and has taken the premises on rent. If we ignore and overlook the Income-Tax Returns and looking at the rent which he is paying monthly for the premises, it can be reasonably estimated that he may be having earnings of about Rs.22,000/- per month.

15. In the case of Gurpreet Kaur and Ors. v. United India Insurance co.



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Lts, Civil Appeal No. 6981-82 of 2022 decided on 27.09.2022, it has been observed that a fair assessment of the income of a person, can be made by considering his expenses.

16. Therefore, though the income of Rs.21,594/- may have been calculated by taking an average of Income-Tax Returns, which have been shown to be not pertaining to the employment of the injured, but making a reasonable estimation of his monthly expenses, it can still be held that he was having earnings of about Rs.22,000/-p.m. For the reasons stated hereinabove, no interference is warranted in the monthly income of Rs.21,594/- p.m. as has been assessed by the learned Tribunal.

Cost of Prosthetic:

17. The *second ground* taken is that only an estimate of cost of prosthetic in the sum of Rs.3,50,000/-, had been furnished. There is no cogent evidence in proof of the amount actually spent on prosthetic and it has been incorrectly granted.

18. However, it cannot be overlooked that the reasonable assessment has been made on the basis of Invoice. No contrary evidence has been made by the Insurance Company, to prove that the cost of prosthetic is not Rs.3,50,000/-.

19. It is further claimed that there is no proof of purchase of prosthetic despite which the interest has been granted on this amount of Rs.3,50,000/- @6%. However, it cannot be overlooked that the injured has suffered amputation of left leg above knee and would definitely be requiring a prosthetic.

20. The Ld. Tribunal has granted reasonable amount on this account,



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which needs no interference.

Rate of Interest on Future Treatment:

21. The *next ground* agitated is that the interest of 6% p.a. has been granted even on the compensation granted on account of future treatment i.e. Rs.3,50,000/- for prosthetic.

22. The learned Tribunal has rightly made an assessment of the cost of prosthetic and granted Rs.3,50,000/-. It is pertinent to observe that only Rs.3,50,000/- has been granted and there is no further compensation granted on account of maintenance or replacement of prosthetic. No interference is warranted on this ground. The mere grant of 6% interest on this amount on a prosthetic, which is a consumable, cannot be faulted.

Conclusion:

23. There is no interference merited in the Award and the Appeal is accordingly dismissed. The Award amount be disbursed in accordance with the Award to the Injured.

24. The Appeal is disposed of accordingly along with the Application(s).

**(NEENA BANSAL KRISHNA)
JUDGE**

DECEMBER 12, 2024/RS