



- * **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 08 April 2024**
Judgment pronounced on : 17 May 2024
- + MAC.APP. 1033/2018 and CM APPL. 48752/2018 (Stay)
FUTURE GENERALI INDIA INSURANCE COMPANY LTD
..... Appellant
Through: Mr. Pankaj Gupta and Ms.
Suman Bagga, Advs.
- versus
- SAFEEYA & ORS Respondents
Through: Mr. M.K. Sharma and Mr.
Shrey Chathly, Advs. for R-1.
- + MAC.APP. 1041/2018 and CM APPL. 48814/2018 (Stay), CM
APPL. 8190/2019 (Cross objections/ converted in to MACA
304/2019) and CM APPL. 13919/2021 (For releasing award
amount)
FUTURE GENERALI INDIA INSURANCE COMPANY LTD
..... Appellant
Through: Mr. Pankaj Gupta and Ms.
Suman Bagga, Advs.
- versus
- ISHRAT & ORS Respondents
Through: Mr. M.K. Sharma and Mr.
Shrey Chathly, Advs. for R-1.
- + MAC.APP. 304/2019
ISHRAT Appellant
Through: Mr. M.K. Sharma and Mr.
Shrey Chathly, Advs.
- versus



FUTURE GENERALI INDIA INSURANCE COMPANY
LTD & ORS Respondents

Through: Mr. Pankaj Gupta and Ms.
Suman Bagga, Advs. for R-1.

+ MAC.APP. 306/2019

SAFEEYA Appellant

Through: Mr. M.K. Sharma and Mr.
Shrey Chathly, Advs.

versus

FUTURE GENERALI INDIA INSURANCE COMPANY LTD
& ORS Respondents

Through: Mr. Pankaj Gupta and Ms.
Suman Bagga, Advs. for R-1.

+ MAC.APP. 379/2023 and CM APPL. 40651/2023

AAS MOHAMMAD Appellant

Through: Mr. M.K. Sharma and Mr.
Shrey Chathly, Advs.

versus

SH MANOJ KUMAR AND OTHERS Respondents

Through: Mr. Pankaj Gupta and Ms.
Suman Bagga, Advs. for R-3.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This common judgment shall decide the above noted appeals,
which have been preferred under Section 173 of the Motor Vehicles



Act, 1988¹, by the contesting parties raising certain issues arising out of a common judgment-cum-award dated 21.07.2018, passed by the learned Presiding Officer, Motor Accident Claims Tribunal², Patiala House Court, New Delhi, in MACP. No. 137/2016³ and MACP. No. 135/2016⁴, whereby the claim petition preferred by the respondent No.1/claimant/injured under Sections 166 and 140 of the M.V. Act was allowed and the liability to pay compensation was fastened upon the Insurance Company, which is being assailed by the appellant/Insurance Company in MAC.APPs. 1033/2018 and 1041/2018. On the other hand, the claimants/injured persons, namely Mr. Safeeya and Mst. Ishrat have instituted the aforesaid appeals bearing MAC.APPs. 304/2019 and 306/2019, thereby assailing the common judgment-cum-award dated 21.07.2018 so as to seek enhanced compensation for the injuries and permanent disability suffered in the motor accident on 05.12.2015.

2. The 5th appeal being MAC.APP. 379/2023 is filed by the injured/claimant assailing the impugned judgment-cum-award dated 21.11.2022 passed by the learned Presiding Officer, Motor Accident Claims Tribunal, Patiala House Court, New Delhi, whereby his claim petition under Sections 166 and 140 of the M.V. Act, in respect of permanent disability to the extent of 85% suffered by him arising out of the injuries sustained in the same accident i.e. 05.12.2015 has been allowed, awarding total compensation in the sum of Rs. 88,33,363/-

¹ M.V. Act

² Tribunal

³ Safeeya v. Manoj Kumar and Ors. [Old No.318/2016]

⁴ Ishrat v. Manoj Kumar and Ors. [Old No.320/2016]



with interest @ 9% from the date of filing of the petition till realization. However, it was held that the policy of insurance in question was a fabricated document, and thus the same Insurance Company has been exonerated of its financial liability to pay compensation to the claimant and instead the liability to pay compensation has been fastened upon respondents No.2 and 3 i.e. driver/Manoj Kumar and registered owner/Devender respectively, who have not cared to contest the matter at any stage. Incidentally, the appellant/insurance company in MAC.APPs. 1033/2018 and 1041/2018 also seek recovery rights against respondents No.2 and 3 i.e. driver and registered owner respectively. The amount of compensation which has been awarded by the Tribunal, has already been paid to the two claimants in the aforesaid matters.

3. Learned counsel for the claimants has urged that during the course of proceedings in MACP. No. 137/2016 involving injured/claimant Mr Safeeya and MACP. No. 135/2016 involving injured/claimant Mst Ishrat, the insurer never put up a case that the insurance cover issued in respect of the offending vehicle was a forged and fabricated document and even during the course of these appeals, no applications have been moved under Order XLI Rule 27 of the Code of Civil Procedure, 1908⁵ so as to additionally prove such evidence on record. It is urged that the insurer is making an attempt to wriggle out of its liability to pay compensation and its denial is on the basis of evidence led by it in MACP. No. 136/2016⁶ involving

⁵ CPC

⁶ Aas Mohammad v. Manoj Kumar and Ors. [Old No. 319/16]



claimant/injured Aas Mohd. It has been pointed out that the claimant/injured Aas Mohd., who was just 24 years of age at the time of the accident, suffered 85% disability, which is in the nature of permanent physical impairment in relation to right lower limb for the injuries sustained in the accident, substantiated by Disability Certificate (Ex. CW-1/1) and yet no amount of compensation has been received by him till date. It is urged that gross injustice has been caused by the misconduct and dilly-dallied strategy adopted by the Insurance Company, inasmuch as it took several adjournments to lead its evidence in MACP. No. 136/2016 and the misery of the appellant has only been aggravated due to the driver and registered owner of the offending vehicle remaining untraceable.

4. Learned counsel for the claimant in his submissions has relied upon the decisions in **Mangla Ram v. Oriental Insurance Co. Ltd.**⁷, **Oriental Insurance Co. Ltd. v. Jayeshbhai Bhagubhai Patel**⁸, **National Insurance Co. Ltd. v. K. Saravanan**⁹, **V. Ravi v. M/s New India Assurance Co. Ltd.**¹⁰, **Silli Man Subba v. Man Bahadur Subba**¹¹, **United India Insurance Co. Ltd. v. Guddy**¹².

5. *Per contra* Mr. Pankaj Gupta, learned counsel for the insurance company vehemently urged that in the earlier claim petition that led to a common judgment-cum-award dated 21.07.2018, the Insurance Company had taken a specific plea that the policy of insurance was

⁷ (2018) 5 SCC 656

⁸ C/FA/4114/2009 decided on 28.01.2022-Gujarat High Court)

⁹ C.M.A. No.2985/2011 decided on 21.04.202-Madras High Court)

¹⁰ AIR 1997 Calcutta 242

¹¹ II (2015) ACC 117 (Sikk.)

¹² 2013 (2) T.A.C. 928 (Del.)



being verified, and as soon as it was verified, evidence was led on the said aspect in the third claim petition culminating in the judgment dated 21.11.2022. It was vehemently urged that fraud vitiates everything and since the offending vehicle was not insured for third-party risks, no liability to pay compensation can be fastened upon the Insurance Company.

ANALYSIS & DECISION IN MAC APP. 379/2023:

6. I have given my anxious consideration to the submissions advanced by the learned counsels for the rival parties at the Bar and on careful perusal of the record, including the digitized Trial Court Record, this Court, unhesitatingly finds that the impugned judgment-cum-award dated 21.11.2022 passed in MACP. No. 136/2016 in so far as it exonerated the Insurer from making payment of compensation to the claimant injured cannot be sustained in law.

7. First things first, it would be apposite to reproduce the reasoning given by the learned Tribunal in fastening the financial liability upon the insurance company in MACP. Nos. 137/2016 and 135/2016, which reads as under:

“25. LIABILITY IN BOTH THE MATTERS

Though, all the respondents are held jointly and severally liable to pay the awarded amount of compensation, but since R-3/Insurance Co. has not proved any violation of the terms and conditions of insurance policy. Hence, R-3 is directed to deposit the above award amount with UCO Bank, Patiala House Court Branch, alongwith interest @ 9% per annum, by way of crossed cheque/DD in name of the petitioners within 30 days from today failing which it will be liable to pay interest at the rate of 12% per annum for the period of delay. In case even after passage of 90 days from today, R-3 fails to deposit this light of the New India compensation with proportionate interest, in that event, in judgment of the Hon'ble High Court of Delhi in the case of Assurance Company Limited



Vs. Kashmiri Lai, 2007 ACJ 688, this compensation shall be recovered by attaching the bank account of the insurance company with a cost of Rs.5,000/-.

R-3 shall inform the claimant (s) and their counsel through registered post that the cheques of the awarded amounts are being deposited so as to facilitate them to collect their cheques.”

8. It may be reiterated here that both the driver and registered owner of the offending vehicle never contested the claim petitions and insofar the Issue No.1 with regard to fixing of the responsibility for causing the accident is concerned, the finding of the learned Tribunal that the motor accident occurred due to rash and negligent driving of the driver of the offending vehicle has not been assailed and is thus final.

9. Further, no evidence was led even by the Insurance Company so as to prove that the policy of the insurance purportedly issued in favour of the registered owner with regard to the offending vehicle was forged or fabricated. The claim petitions by the two claimants/injured persons were instituted on 29.03.2016 and the proceedings/trial concluded in approximately two years. On the other hand, the MACP No. 136/2016 by the claimant/injured Aas Mohd. was also instituted on 29.03.2016 but the trial concluded later culminating in passing of judgment cum award on 29.10.2022, probably on account of the Courts/Tribunals not functioning full-fledged during the intervening COVID-19 pandemic period. The digitized Trial Court Record reflects that the appellant/insurance company moved an application seeking to adduce additional evidence on the ground that policy of insurance was forged and fabricated, which was allowed *vide* order dated 31.10.2018 by the learned



Tribunal and accordingly two witnesses were examined by the insurer company being R-3W-1/Amit Kumar, its Assistant Manager (Legal) and R-3W-2/Ms. Hreeshika Bhargava its Field Officer/Legal Officer on 25.04.2019 and 07.11.2022.

10. The aforesaid peculiar facts and circumstances beg the question as to whether the findings about the validity of the policy of insurance purportedly issued in respect of offending vehicle for the period from 05.11.2015 to 04.11.2016 operated as constructive *res judicata* or issue *estoppel* upon the decision in the third claim petition of Aas Mohd. bearing MACP. No. 136/2016.

11. It would be apposite to reproduce the findings recorded by the learned Tribunal in MACP No. 136/2016 in giving rise to MAC APP No. 379/2023 instituted by the appellant Aas Mohammad, which reads as under:-

“18. It has been emphatically contended on behalf of respondent no. 3 that the Insurance cover note, Ex. R3W1/P1 is forged and fabricated. In its written statement, respondent no. 3 had categorically averred that it is yet to get the copy of Insurance policy and confirmation about its validity. When it was revealed that the Insurance cover note annexed with the chargesheet is fake, forged and fabricated, it had filed an application seeking opportunity to adduce RE which was allowed vide order dated 31.10.2018. Thereafter, respondent no. 3 had examined Sh. Amit Kumar, Asstt. Manager, Legal as R3W1 and Ms. Hreeshika Bhargava, Legal Officer as R3W2 who categorically deposed that the offending Tractor was never insured by respondent no. 3. The intermediary name codes mentioned on the cover note do not pertain to respondent no. 3. Respondent no. 3 had also written a letter dated 16.11.2018 to respondent no. 2/ owner of the offending Tractor whereby he was informed that the purported cover note was never issued by it. A complaint dated 12.11.2018 was also lodged with DCP, New Delhi District about the use of forged and fabricated Insurance cover note. Respondent no. 2 did not respond to letter dated 16.12.2018, Ex. R3W2/l. The original postal receipt



dated 17.11.2018 has also been filed by respondent no. 3 whereby, letter dated 16.11.2018 was dispatched to respondent no. 2. Accordingly, adverse inference has to be drawn against respondent no. 2. Respondent no. 3 is not liable to pay any compensation to the petitioner as the offending Tractor was not insured by it.

19. The Tribunal is of the considered view that it has been established by respondent no. 3 that it had written letter dated 16.11.2018, Ex. R3W2/1 to respondent no. 2 which was dispatched vide registered post against postal receipt dated 17.11.2018, vide which, respondent no. 2 was informed that the offending Tractor owned by him was not insured with it and the purported cover note was a fabricated document. He was requested to produce the original cover note before the Tribunal. However, neither respondent no. 2 replied to the said letter, nor he produced the original cover note before this Tribunal. He also did not adduce any evidence to establish that the offending Tractor was infact insured with respondent no. 3 and the Insurance was valid on date of the accident. In addition to this, a perusal of the Insurance cover note, Ex. R3W1/P1 shows that the spellings of words 'Connaught Place, New Delhi' are incorrect and 'Coughnat Palace, New Dehli' have been written which is highly unlikely as respondent no. 3 is a big reputed corporate which is not expected to issue cover notes containing such glaring mistakes. It has also been stated by R3W1 that respondent no. 3 never uses the words 'Original Insured' on 'any of its stamps as is appearing on purported cover note, Ex. : R3W1/P1. Therefore, it is held that the offending Tractor was not insured with respondent no. 3, as on the date of the accident.

12. Unhesitatingly, this Court finds that the aforesaid findings of the learned Tribunal cannot be sustained in law since the issue of validity of policy of insurance was never agitated in the two earlier MACPs bearing Nos. 137/2016 and 135/2016, which were decided *vide* common judgment-cum-award dated 21.07.2018, which were in respect of the same vehicular accident involving three claimants excluding appellant Aas Mohammad.

13. At this juncture, it would be apposite to refer to the testimony of R3W1 Mr. Amit Kumar, Assistant Manager (Legal) examined on 25.04.2019 in MACP No. 136/2016. In his examination-in-chief, he



produced his authority letter marked **Ex.R3W1/1** authorizing him to depose on behalf of the Insurance Company and produced the legal notice dated 16.11.2018 **Ex.R3W1/2** purportedly sent to the driver and the registered owner of the offending vehicle besides the police complaint along with a copy of the fake and forged insurance cover note **Mark 'A'** (colly) (2 pages). It would be expedient to reproduce the cross-examination of R3W1 Mr. Amit Kumar, which goes as under:-

“The fact about fake cover note came to my notice in the month of October, 2018. I have been working in this company since August 2017. **I can not tell as to how the policy or the cover note has been issued. Vol. It pertains to Operation Department.** It is correct that we intimated to the dealing counsel about fake cover note based on which notice to the owner was sent by him. It is correct that I am conversant with the contents of the affidavit Ex. R3W1/A which are true and correct to my knowledge, based on company records. **At this stage, the witness is shown the copy of cover note filed with the petition and after seeing the same, the witness states that the cover note, bears a different stamp-which does not belong to our company as the stamp of the company also contains the branch address of the Issuing office.** The above cover note on record shown to the witness is Ex. R3W1/P1. The stamp shown to the witness on this cover note is at encircled portion at point A. Vol. The genuine stamp of the company is appearing on document Mark A above. **At this stage, Ld. Counsel for the petitioner has shown to the witness above cover note Ex. R3W1/P1 and the witness admits that one other stamp of a different pattern is also there at point B on this document and in that stamp, the registration number (Reg. No.) of the company as 8186 is mentioned, but the witness submits that even the stamp as per his knowledge does not pertain to their company as he had never seen any stamp in the name of company in that pattern.** It is wrong to suggest that the above cover note Ex. R3W1/P1 belongs to our company and the stamp as well as logo in this document are genuine and belong to our company. Vol. Even the spelling of "*Connaught Place*" are not correctly written/printed in this document as "*Connaught*" has been written as "*Coughnat*". Further, Vol. That even the words "*original insured*" are never there in any stamp of the company.



Since I had joined the company in the year 2015 (in reply to court query, the witness states that the pattern and stamps remain the same and he can say that even in the year 2015, the stamps appearing on Ex.R3W1/P1 were not in use).

The company received the summons on 10.05.2016. I do not remember whether any investigation of the owner was ever conducted by our company or submitted with the company. It is wrong to suggest that I am deposing falsely.

XXX on behalf of R-1 and R-2.

Nil. Opportunity given.”

14. It would further be apposite to refer to the cross-examination of R3W2 Ms. Hreeshika Bhargava, Legal Officer, recorded on 07.11.2022 that goes as under:-

“I cannot tell when it came to the notice of the company that the cover note in question is fake. I do not know whether any notice was sent to the owner of the vehicle in question by our company regarding fake cover note. No outcomes of criminal proceedings regarding fake cover note has yet been filed before the Hon'ble Court by our company. I have no personal knowledge about the culprits who has issued the fake cover note has been arrested or not. I have no knowledge whether any complaint or petition has been filed by our company before the Ld. MM regarding the fake cover note. I have no knowledge whether any written information received regarding fake cover note from the company office situated at Shaheed Jeet Singh Marg has been filed on record or not. Today, I have not filed any written information from the aforementioned office. (Vol. Before filing affidavit, we confirm intra company about genuineness of policy cover note). I joined this office in the year 2020. I cannot tell who was posted as Branch Manager in the year 2015 at the Issuing Office and I cannot recognize his signatures of the person who had issued the fake cover note, It is wrong to suggest that the cover note belongs to our company is genuine and we are denying the same in order to evade the liability, It is wrong to suggest that I am deposing falsely”
{bold portions emphasized }

15. Upon a careful perusal of the cross-examinations of the two aforesaid witnesses produced and examined on behalf of the Insurance Company, it is interesting to observe that R3W2 testified that she



could not tell as to when it came to the notice of the company that the cover note was fake whereas R3W1 testified that such fact came to their notice in the month of October, 2018 i.e., after passing of the impugned judgment-cum-award in MACP No. 137/2016 and 135/2016. Of the two witnesses examined, it is apparent that R3W2 joined the office in June, 2020 and she had no personal knowledge of the facts and circumstances of the case and she was not even able to recognize the signature of the person or the purported officer of the Insurance Company on the so called fake cover note Ex.R3W1/P-1.

16. Insofar as R3W1 is concerned, apparently he was working since August, 2007 in the Insurance Company but then he also testified that he could not tell as to how the cover note/policy had been issued as it pertained to the Operations Department of the Insurance Company. R3W1 on being prodded about the cover note filed along with the claim petition, testified that the stamp impression on the insurance cover notes bear the address details of the branch office. Infact, R3W1 acknowledged that there were two different stamps on Ex. R3W1/P-1 at point 'B' bearing registration number of the company as '8186'.

17. I am afraid the testimony of R3W1 also does not stem from his personal knowledge as he was apparently not dealing personally with the issuance of cover notes to its customers. Thus, in the backdrop that R3W-1 was unable to disclose the working pattern and use of stamps since 2015, the mere fact that Connaught Place was wrongly spelt and his volunteered version that 'original insured' was never ingrained in



the stamping of the company, are facts that hardly prove that the cover note/ insurance policy was not genuine.

18. The long and short of the aforesaid discussion brings out the following facts for our consideration:

- (i) The three claim petitions bearing Nos. 135/2015, 136/2016 and 137/2016 were instituted on the same day i.e. 29.03.2016;
- (ii) The three claim petitions were consolidated and there were framed common issues for a common decision *vide* order dated 11.08.2016;
- (iii) The claim petitions sought compensation in respect of injuries sustained by the claimants arising out of the same motor accident that occurred on 05.12.2015 involving the offending vehicle/tractor bearing registration No. UP17D-2630 being driven by driver Manoj Kumar and registered in the name of Mr. Devender, both S/o Mr. Ishwar Singh;
- (iv) As per the testimony of R3W1 the notice of the claim petitions were served upon the Insurance Company on 10.05.2016;
- (v) In the written statement filed on behalf of the Insurance Company, there was no plea taken that the cover note/policy of insurance was forged and fabricated and only a plea was taken that insurance company was in the process of verifying the validity and authenticity of the driving license of the driver Manoj Kumar and enquiring into whether or not there was any violation of permit conditions;
- (vi) Evidently in MACP Nos. 137/2016 and 135/2016 no evidence was led by the appellant/insurance company to prove that the cover note/ policy of insurance was forged and fabricated;
- (vii) As discussed hereinabove, the testimony of R3W2 does not substantiate the defence put forth subsequent to adducing additional evidence allowed *vide* order dated 31.10.2018;
- (viii) Likewise, the testimony of R3W1 is not credible enough so as to hold that the policy of insurance/cover note was forged and fabricated, particularly when no criminal prosecution was pursued by the Insurance Company;
- (ix) Interestingly, in the appeals bearing MAC APP No. 1033/2018 and 1041/2018, challenging the impugned judgment-cum-award dated 21.07.2018 passed by the learned Tribunal in MACP No. 137/2016 and 135/2016, when both came up for hearing for the first time before this Court on 26.11.2018 there was



again no whisper of a plea that the cover note/policy of insurance was forged and fabricated; and

(x) Even during pendency of the present appeals, no application under Order XLI Rule 27 of the CPC has been moved by the Insurance Company so as to lead additional evidence to prove that the cover note /policy of insurance was forged and fabricated.

19. The aforesaid facts and circumstances established on the judicial record leave no escape from the conclusion that the appellant/insurance company cannot be allowed to approbate and reprobate in the same breath. The Insurance Company cannot be allowed to take contradictory stands, particularly when it took an inordinate period of time in verifying the genuineness of the cover note/policy of insurance.

20. In the light of the facts and circumstances that are presently posed before us, this Court is of the view that the findings given by the learned Tribunal in MACP Nos. 137/2016 and 135/2016 culminating in judgment-cum-award dated 21.07.2018 thereby holding the Insurance Company to shoulder the responsibility to compensate the claimants, shall constitute *issue estoppel* so as to bar the appellant/insurance company in MAC. APP. 379/2023 to claim that the cover note/policy of insurance was not genuine. Although, the issue of genuineness of the cover note/policy of insurance is not between the same parties but inasmuch as it arises from the same vehicular accident and involves the same offending vehicle, the challenge to genuineness of the cover note/policy of insurance cannot be allowed to be re-agitated by the appellant/insurance company so as



to wriggle out from its financial liability to pay compensation to the victims.

21. At this juncture, it would be relevant to refer to the decision of the Supreme Court in the case of **Mathura Prasad Bajoo Jaiswal v. Dossbai N.B. Jeejeebhoy**¹³ wherein it was held as under:-

“It is true that in determining the application of the rule of res judicata the Court is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent Court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened. **A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties.** But, where the decision is on a question of law i.e. the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression “the matter in issue” in Section 11 of the Code of Civil Procedure means the right litigated between the parties i.e. the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of that order under the rule of res judicata, for a rule of procedure cannot supersede the law of the land.”

(Paragraph 11)

{bold portions emphasized }

22. It would be relevant to refer to decision by the Kerala High Court titled as **Devi T. V. Jamsheer P. & Ors.**¹⁴, wherein there were two claimants who suffered injuries while travelling in an auto-rickshaw and while compensation was awarded to both of them in separate claim petitions, in one claim petition the learned Tribunal

¹³ (1970) 1 SCC 614

¹⁴ (2016) SCC OnLine Ker 23821



held the Insurance Company liable to pay compensation while in the other claim petition, liability to pay compensation was vicariously fastened on the driver and the registered owner thereby exonerating the Insurer of any financial liability to pay the compensation amount. The Kerala High Court also relied on the decision in the case of *Mathura Prasad Bajoo Jaiswal (supra)* and in the peculiar facts and circumstances of the aforesaid case it was held as under:-

“Insurance Company cannot be heard to contend that they are liable to indemnify the owner only in the claim of the co-passenger in the accident but not in this case. That is, the Insurance Company is liable to indemnify the insurer/appellant owner as per the insurance policy which was already considered by this court as an issue between the third respondent-insurer and the insured-owner who is the appellant in the latter case. They are not entitled to recover the amount paid to the claimant, from the appellant in the latter appeal who is the insured-owner as permitted in the award of the Tribunal. (Paragraph 12)

Thus, it can be seen that, in this case, the principle of issue-estoppel will be applicable. When the principle of issue-estoppel is applicable, the party is barred from raising the same point decided by application of law on given facts. i.e. when the party is barred from raising the said issue, this court need not reopen and re-hear on the issue to find out the extent of liability of the insurer. (Paragraph 13)

The principle is that when issue-estoppel operates as a bar for raising contentions, then decided issue cannot be reopened.”

(Paragraph 14)

{bold portions emphasized }

23. In view of the foregoing discussion, this Court holds that the impugned judgment-cum-award dated 21.11.2022 passed in MACP No. 136/2016 with regard to appellant Aas Mohammad cannot be sustained in law and the same is liable to be set aside insofar as the appellant/insurance company has been exonerated of its financial liability to pay compensation.



24. Since there is no challenge by the Insurance Company as to the quantum of compensation, which manifestly appears to be just and reasonable, it is, therefore, held that the appellant/insurance company shall pay the entire amount of compensation amounting to Rs. 88,33,363/- to the appellant Aas Mohammad with interest @ 9% from the date of filing of the petition till realization. The amount of compensation shall be deposited 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 filing of the present appeal i.e. 26.11.2018 till realization.

25. The MAC. APP 379/2023 is decided accordingly. All the pending applications also stand disposed of accordingly.

DECISION IN MAC. APP. 1033/2018 & 306/2019

26. In order to decide the aforesaid appeals, it would be apposite to refer to the manner in which the compensation has been worked out by the learned Tribunal, which is as under:-

**SUMMARY OF THE COMPUTATION OF
AWARD IN INJURY CASES IN FORM-IVB**

1.	Date of accident	: 05.12.2015
2.	Name of the injured	: Sh. Safeeya
3.	Age of injured	: 48-49 Years
4.	Occupation of the injured worker	: Unskilled worker
5.	Income of the injured	: Rs.6,815/-
6.	Nature of injury	: Grievous
7.	Medical treatment taken by the injured	: LNJP Hospital
8.	Period of hospitalization	: 1 month
9.	Whether any permanent disability? If yes, give details	: 15% permanent physical impairment

10. Computation of Compensation



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Sr.No.	Heads	Amount awarded
11.	Pecuniary Loss	
(i)	Expenditure on treatment	Rs.31,663.00
(ii)	Expenditure on conveyance	Rs.25,000.00
(iii)	Expenditure on special diet	Rs.25,000.00
(iv)	Cost of nursing/attendant	Rs.50,000.00
(v)	Loss of earning capacity	Nil
(vi)	Loss of income	Rs.81,780/-
(vii)	Any other loss which may require any special treatment or aid to the injured for the rest of his life	Nil
12.	Non-pecuniary Loss:	
(i)	Compensation for mental and physical shock	Rs.40,000.00
(ii)	Pain and suffering	Rs.40,000.00
(iii)	Loss of amenities of life	Rs.20,000.00
(iv)	Disfiguration	Nil
(v)	Loss of marriage prospects	Nil
(vi)	Loss of earning, inconvenience, hardships, disappointment, frustration, mental stress, dejection and unhappiness in future life etc.	Nil
13.	Disability resulting in loss of earning capacity	
(i)	Percentage of disability assessed and nature of disability as permanent or temporary	15% permanent physical impairment
(ii)	Loss of amenities or loss of expectation of life span on account of disability	Nil
(iii)	Percentage of loss of earning relation to disability	10%
(iv)	Loss of future income	Rs.1,32,892.50
14.	Total Compensation	Rs.4,46,335.50/-
15.	Interest Awarded	9% per annum from the date of filing of petition i.e. 29.03.2016 till deposit and 12% thereafter
16.	Interest amount up to the date of award	Rs. 92,886.70/-

Signature Not Verified

Digitally Signed By: PRADEEP KUMAR VATS
Signing Date: 17/05/2024 17:46:31

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17.	Total amount including interest	Rs. 5,39,222.20 (rounded off to Rs. 5,40,000/-)
18.	Award amount released	Rs.2,40,000/-
19.	Award amount kept in FDRs	Rs.3,00,000/-
20.	Mode of disbursement of the award amount of the claimant(s)	Through bank
21.	Next date for compliance of the award	31.11.2018

27. The main plea of the appellant/insurance company is that the learned Tribunal has assessed the compensation on a higher side inasmuch as the impact of the disability *qua* the whole body has been taken on a higher side apart from the loss of income and medical expenses. Further, a challenge is made to the award of Rs. 2,00,000/- distributed under various heads which too is claimed to be on the higher side. *Per contra*, the appellant/claimant in his appeal has sought enhancement under each pecuniary and non-pecuniary head of the compensation awarded.

28. First things first, as regards the compensation on account of medical treatment or reimbursement of such expenses, learned Tribunal rightly discarded the deposition of the claimant in his affidavit **Ex.PW-3/A** that he has spent more than Rs. 1,00,000/- on his treatment. However, learned Tribunal had the occasion to scrutinize the medical bills towards purchase of medicines and surgical equipments, which are **Ex.PW-3/4 (colly)** and assessed the expenditure on treatment to be Rs. 31,633/-. No interference is required in the award of such compensation amount.

29. As regards loss of earning capacity or functional disability, the learned Tribunal took into account the fact that the claimant was the



bread-earner of his family. Upon discarding his testimony that he was working as a plumber and earning about Rs. 20,000/- per month, the learned Tribunal assumed his notional income in terms of the minimum wage prevailing at the relevant time i.e. Rs. 6815/- per month. However, since the claimant was 49 years of age and was otherwise an able bodied person, it would be reasonable to hold that he must have been earning a minimum Rs.10,000/- per month. It goes without saying that although the scales of minimum wages are a good indicators, however, they have no co-relation with the age, experience and competence of the workman. Learned Tribunal on the basis of the deposition in affidavit **Ex.PW-3/A** vis-a-vis the treatment record **Ex.PW-3/3** (colly) and the discharge summary **Ex.PW-3/2** (colly), came to the conclusion that he was hospitalized from 06.12.2015 to 01.01.2016 and even thereafter he had made regular rounds to the Hospital for his follow-up treatment. Learned Tribunal, therefore, rightly assumed that the claimant/injured was bed-ridden and also unable to do daily chores for about a year and rightly awarded an amount of Rs. 81,780/- (6815 x 12) towards loss of income/ earnings, which should be enhanced to Rs1,20,000/- (10,000 x 12).

30. Coming to the grant of compensation on account of loss of future earning/functional disability due to injuries sustained in the accident, it is evident that at the age of 49 years, the claimant/injured suffered fracture intertrochateric femur right, cumulative fracture of shaft of femur right and fracture of pelvis, besides other multiple injuries all over his body. The claimant examined Dr. Vivek Jangira, Associate Professor, Department of Orthopedics, Dr RML Hospital,



New Delhi, who deposed that as per the disability certificate dated 18.04.2017 **Ex.PW-5/1**, the temporary disability was opined to be 15% subject to review after two years from the date of surgery and subsequently the claimant/injured was again medically examined by the Medical Board and as per the disability certificate **Ex.PW-5/2**, permanent physical impairment was again found to be 15%.

31. At the outset, the plea by the Insurance Company that compensation on this count is on the higher side is also not sustainable. Learned Tribunal rightly considered 25% addition in the claimant's notional income in the nature of potential future prospects and reckoned disability at 10% of the whole body. This Court finds that considering his evidence to the effect that he was working as a plumber that remained uncontroverted, the disability @10% *qua* the whole body does not require interference. There is no gain saying that the nature of injuries suffered by the claimant/injured was quite traumatic and suffering such injuries at the age of 49 years must have been a painful experience, and needless to state that the disability is such that would remain a big handicap in performing normal bodily functions throughout his remaining life. Accordingly, the grant of compensation under loss of earning capacity assessed to be Rs. 1,32,892.50 Paisa ($6815 \times 125/100 \times 10/100 \times 12 \times 13$)¹⁵ by the learned Tribunal is to be re-worked by assessing notional monthly income at Rs. 10,000/ per month and the same is worked out to be Rs. 1,95,000/- ($10,000 \times 125/100 \times 10/100 \times 12 \times 13$).

¹⁵ Multiplier of 13 was applied



32. Having said that, this Court finds that the learned Tribunal has awarded a very meagre compensation on account of mental, physical shock as well as pain and suffering besides loss of amenities amounting to Rs. 40,000/- under first two heads and Rs. 20,000/- towards the last head. There is considerable merit in the plea of claimant/injured that the same must be enhanced. Accordingly, the compensation towards pain and suffering is enhanced to Rs. 2,00,000/- and an equal amount of compensation i.e. Rs. 2,00,000/- is enhanced towards loss of amenities and enjoyment of life.

33. Although no evidence was led to prove that any nursing attendant was employed or deployed so as to assist the claimant/injured, however, considering that he was bed ridden and unable to work in any manner for about a year, it is but apparent that he must have engaged a domestic help or a skilled or unskilled nursing attendant to help him with his daily routine, and therefore, the compensation under Cost of Nursing/Attendant is enhanced from Rs. 50,000/- to Rs. 1,00,000/-. Accordingly, the amount of compensation is worked out as under:-

Sr. No.	Heads of compensation	Amount
1.	Expenditure on medical treatment	Rs.31,663/-
2.	Expenditure on conveyance	Rs.25,000/-
3.	Expenditure on special diet	Rs.25,000/-
4.	Cost of nursing/attendant	Rs.1,00,000/-
5.	Loss of income	Rs.1,20,000
6.	Pain and suffering	Rs.2,00,000/-
7.	Loss of enjoyment of life	Rs.2,00,000/-



8.	Loss of earning capacity/functional disability	Rs.1,95,000/-
	Total:	Rs.8,96,663/-

34. Accordingly, the claimant/injured is awarded total compensation of Rs. 8,96,663/- which shall be payable with interest @ 9% per annum from the date of filing of petition till realization. The amount of compensation shall be deposited with the learned Tribunal within four weeks from today, failing which the Insurance Company shall be liable to pay penal interest @ 12% per annum from the date of filing of this appeal before this Court i.e. 26.11.2018 till realization.

35. In view of the foregoing discussion, the MAC APP No. 1033/2018 filed by the appellant/insurance company is hereby dismissed. The appeal bearing MAC APP. No. 306/2019 filed by the appellant/claimant-injured is hereby allowed on the abovesaid terms.

36. All the pending applications stand disposed of accordingly.

DECISION IN MAC. APP. 1041/2018 & 304/2019

37. Likewise, in order to decide the aforesaid appeals, it would be apposite to refer to the manner in which compensation was worked out by the learned Tribunal, which is as under:-

**SUMMARY OF THE COMPUTATION OF
AWARD IN INJURY CASES IN FORM-IVB**

- | | | |
|----|----------------------------------|--------------------|
| 1. | Date of accident | : 05.12.2015 |
| 2. | Name of the injured | : Smt. Ishrat |
| 3. | Age of injured | : 37-38 Years |
| 4. | Occupation of the injured worker | : Unskilled worker |
| 5. | Income of the injured | : Rs.6,815/- |
| 6. | Nature of injury | : Grievous |
| 7. | Medical treatment taken by | |



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- the injured : LNJP Hospital &
Dayawati Hospital
8. Period of hospitalization : 11 days
9. Whether any permanent disability?
If yes, give details : 53% permanent
physical impairment

10. Computation of Compensation		
Sr.No.	Heads	Amount awarded
11.	Pecuniary Loss	
(i)	Expenditure on treatment	Rs.85,155.00
(ii)	Expenditure on conveyance	Rs.25,000.00
(iii)	Expenditure on special diet	Rs.25,000.00
(iv)	Cost of nursing/attendant	Rs.50,000.00
(v)	Loss of earning capacity	Nil
(vi)	Loss of income	Rs.81,780/-
(vii)	Any other loss which may require any special treatment or aid to the injured for the rest of his life	Nil
12.	Non-pecuniary Loss:	
(i)	Compensation for mental and physical shock	Rs.40,000/-
(ii)	Pain and suffering	Rs.40,000.00
(iii)	Loss of amenities of life	Rs.20,000.00
(iv)	Disfiguration	Nil
(v)	Loss of marriage prospects	Nil
(vi)	Loss of earning, inconvenience, hardships, disappointment, frustration, mental stress, dejection and unhappiness in future life etc.	Nil
13.	Disability resulting in loss of earning capacity	
(i)	Percentage of disability assessed and nature of disability as permanent or temporary	53% permanent physical impairment
(ii)	Loss of amenities or loss of expectation of life span on account of disability	Nil
(iii)	Percentage of loss of earning relation to disability	40%
(iv)	Loss of future income	Rs.6,86,952.00
14.	Total Compensation	Rs.10,53,887.00

Signature Not Verified

Digitally Signed By: PRADEEP KUMAR VATS
Signing Date: 17/05/2024 17:46:31

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15.	Interest Awarded	9% per annum from the date of filing of petition i.e. 29.03.2016 till deposit and 12% thereafter
16.	Interest amount up to the date of award	Rs. 2,19,323.99
17.	Total amount including interest	Rs.12,73,210.99 (rounded off to Rs. 12,74,000/-
18.	Award amount released	Rs.2,74,000/-
19.	Award amount kept in FDRs	Rs.10,00,000/-
20.	Mode of disbursement of the award amount of the claimant(s)	Through bank
21.	Next date for compliance of the award	31.10.2018

38. The Insurance Company has assailed the impugned judgment-cum-award primarily on the ground that the learned Tribunal has assumed 40% permanent disability *qua* the whole body for reckoning compensation towards earning capacity/functional disability on the higher side considering that the permanent disability was only to the extent of 53%. The appellant/insurance company has further assailed the grant of compensation under pecuniary and non-pecuniary heads for being on the higher side. Well, it is obvious that a counter view has been propounded by the claimant/injured in her appeal before this Court.

39. As regards compensation on account of medical treatment, the learned Tribunal discarded the deposition of PW-4/claimant in her affidavit Ex.PW-4/A to the effect that she had spent more than Rs. 1,00,000/- on her medical treatment as also her deposition that an estimated amount of Rs. 2,50,000/- would be spent on her future



medical treatment. Learned Tribunal found that the claimant has been able to prove the purchase of medicines and surgical equipments in terms of bills/invoices proven on the record **Ex.PW-4/6** (colly) totalling to Rs. 85,155/- only. Learned Tribunal found that no Doctor from the Hospital was examined with regard to future medical treatment and the estimate dated 25.10.2016 purportedly from Silver Cross Hospital and Trauma Center, Meerut **Ex.PW4/5** contained certain overwriting and additions and hence it was held to be not credible.

40. However, having regard to the totality of facts and circumstances of the present case, a just and fair amount of compensation is definitely required to be given towards future medical treatment and expenses, upon which I shall delve later on in this judgment. As regards loss of earning, learned Tribunal found that as per the deposition of PW-4 claimant/injured in her affidavit **Ex.PW-4/A**, she suffered fracture shaft of humerus (R), fracture of radial head (R), fracture of middle and distal phalanx index finger (R), fracture of proximal phalanx 4th finger (L), right thumb and index finger amputated and Hb open wound at right shoulder and upper arm and inability to use, wound on right knee & eye, besides other multiple injuries all over her body. It is proved on record the after the accident, she was removed to District Hospital Baghpat and then referred to LNJP Hospital wherein she remained confined from 06.12.2015 to 12.12.2015 during which period she was subjected to various surgical procedures for insertion/fixation of rods in her right hand and elbow. Based on the discharge summary of LNJP Hospital **Ex.PW-4/2** and



one Dayawati Hospital, Meerut **Ex.PW-4/3** besides the additional treatment record/prescriptions **Ex.PW-4/4** (colly), the learned Tribunal objectively found that she was confined to bed for a year and was unable to perform any work or attend to any household chores, and therefore, reckoned her notional income equivalent to minimum wages of a skilled workman at the relevant time @ Rs. 6815/- per month. Accordingly, a compensation of Rs. 81,780/- (6815 x 12) was awarded towards loss of earning. To my mind, it would be fair to reckon the notional income of the claimant at Rs 8,000/- per month as she was a homemaker and at the age of 39 years, she must be having several household skills to cater to various household chores and rendering considerable services to her family. Hence, the compensation towards loss of income is enhanced to Rs. 96,000/- (Rs 8,000 x 12).

41. As there have been raised serious objections with respect to the issue of quantum of compensation on account of loss of earning capacity or functional disability, addressing the said issue, as per the evidence brought on the record, the claimant/injured was aged about 37-38 years of age. At the cost of repetition, her claim that she was earning Rs. 15,000/- per month by working as a maidservant and doing knitting work, was rejected for lack of evidence and her notional income was reckoned as per the scales of minimum wages applicable in the State of Uttar Pradesh i.e. Rs. 6815/- per month. Further, 40% addition to her income was allowed by the learned Tribunal towards loss of future prospects. The claimant examined one Doctor, namely Dr. A.K. Naik, Professor, Department of Orthopedics,



Dr. RML Hospital as PW-6, who proved on record the disability certificate **Ex.PW-4/8** evidencing that hers was a case of fracture right humerus with implant in situ, stiff elbow and wrist drop and her permanent physical impairment was assessed to be 53% in relation of her right upper limb. Evidently, the claimant is a right-handed person and the permanent disability is such which has rendered her incapacitated for her remaining life in carrying out work of daily routine in her home as well as her outings outside the household. Thus having regard to the fact that she was a homemaker and that her entire family presumably depended upon her for household work, to my mind, reckoning her disability @ 40% towards whole body is not unconscionable or unfathomable. Thus, the award of the learned Tribunal towards loss of future earning or functional disability to the tune of Rs.6,86,952/- $(6815 \times 140/100 \times 40/100 \times 12 \times 15)^{16}$, needs to be re-assessed by assuming her notional income to be Rs.8,000/- per month. Hence, keeping the other parameters the same, the compensation towards future income/functional disability is worked out to be Rs. 8,06,400/- $(8000 \times 140/100 \times 40/100 \times 12 \times 15)$.

42. Without further ado, this Court finds justification in the plea raised by the learned counsel for the claimant/injured that compensation towards pain and suffering as well as loss of enjoyment of amenities of life has been reckoned at a very meagre scale. At the cost of repetition, the claimant/injured remained hospitalized for several months after which there were follow-up treatments, thus under these circumstances, it would not be difficult to comprehend the

¹⁶ Multiplier of 15 was applied



degree of pain and suffering that she has undergone during the whole period of treatment as well as its painful experience that will stay with her for the remainder of her life. The compensation towards pain and suffering is, therefore, enhanced to Rs. 2,00,000/- and an equivalent enhanced amount of Rs. 2,00,000/- is awarded towards loss of enjoyment of amenities of life.

43. Although there is sketchy evidence as to whether any nursing assistant or attendant was engaged but it is not inconceivable having regard to human and social experience that while she was confined to bed, she must have required someone to attend to her and assist her with her daily life routines. Therefore, the amount of compensation towards nursing/attendant is enhanced to Rs. 1,00,000/- from Rs. 50,000/-. Lastly, having regard to the nature of injuries suffered, prolonged medical treatment and future complications, it would be expedient that a sum of Rs. 1,00,000/- be awarded towards future medical treatment.

44. Accordingly, the amount of compensation is worked out as under:-

Sr. No.	Heads of compensation	Amount
1.	Expenditure on medical treatment	Rs.85,155/-
2.	Future medical expenses	Rs. 1,00,000/-
3.	Expenditure on conveyance	Rs.25,000/-
4.	Expenditure on special diet	Rs.25,000/-
5.	Cost of nursing/attendant	Rs.1,00,000/-
6.	Loss of income	Rs.96,000/-
7.	Pain and suffering	Rs.2,00,000/-



8.	Loss of enjoyment of life	Rs.2,00,000/-
9.	Loss of earning capacity/future income	Rs.8,06,400/-
	Total:	Rs.16,37,555/-

45. Accordingly, the claimant/injured is awarded total compensation of Rs. 16,37,555/- which shall be payable with interest @ 9% per annum from the date of filing of petition till realization. The amount of compensation shall be deposited with the learned Tribunal within four weeks from today, failing which the Insurance Company shall be liable to pay penal interest @ 12% per annum from the date of filing of this appeal before this Court i.e. 26.11.2018 till realization.

46. In view of the foregoing discussion, the MAC APP No. 1041/2018 filed by the appellant/insurance company is hereby dismissed. The appeal bearing MAC APP. No. 304/2019 filed by the appellant/claimant-injured is hereby allowed on the above mentioned terms.

47. All the pending applications stand disposed of accordingly.

DHARMESH SHARMA, J.

MAY 17, 2024

Sadiq