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

% ***Date of decision: 16th December, 2024***

+ **MAC.APP. 157/2024, CM APPL. 24444/2024**

BHARTI RATHEE

W/o Sh. Harish Dagar

R/o 82-A, Nanu Ram Park,

Najafgarh, New Delhi.

.....Appellant

Through: Mr. Anshul Mehral, Advocate with
Appellant.

versus

1. **PRADEEP KUMAR**

S/o Virender Kumar

R/o RZ-14K, Gopal Nagar, Phase-2,

Nazafgarh, New Delhi.

2. **DELHI TRANSPORT CORPORATION**

Central Work Shop-1,

B.B Marg, North West, Delhi-110009.

3. **UNITED INDIA INSURANCE COMPANY LIMITED**

E-85, Himalya House K.G. Marg, Connaught Place,

New Delhi.

.....Respondents

Through: Counsel for Respondents.

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 on behalf of the Appellant/Claimant for seeking enhancement of the compensation granted *vide* Award dated 26.10.2023, in the sum of Rs. 22,78,906/- along with the interest @7.5%, on account of injuries suffered by the Appellant, aged about 28 years, in a road accident on 08.05.2019.

2. ***Briefly stated***, on 08.05.2019 at about 07:15 A.M, while the Appellant/Bharti Rathee was going on a Scooty as a pillion rider with her husband, a DTC Bus bearing No.DL1PC 1606 came at a high speed and hit the Scooty near Nangli Dairy Chowk at Main Najafgarh, Delhi, because of which she fell and both her legs came under the rear wheel of the bus and were badly crushed. She was taken to Tarak Hospital and thereafter shifted to Venkateshwar Hospital, Dwarka, New Delhi, where she remained admitted from 08.05.2019 till 11.05.2019. She also remained admitted w.e.f. 11.05.2019 till 25.07.2019 in Jai Prakash Narayan Apex Trauma Centre, AIIMS, New Delhi. *She suffered permanent physical disability of 52% in relation to her both lower limbs.*

3. *FIR No.216/2019 under Section 279/337/338 IPC, 1860* was registered against the driver/Pradeep Kumar. After investigations, the Chargesheet was filed and the Detailed Accident Report (DAR) qua this accident, was filed before the Motor Accident Claim Tribunal.

4. *Vide* the Impugned Award dated 26.10.2023 the compensation in the sum of Rs. 22,78,906/-, along with the interest @7.5%, was granted to the Appellant.

5. The main grounds for seeking enhancement, are:-

i. That the Loss of Income has been granted only for 12 months,



without considering that she was not able to rejoin work for about 61 months;

- ii. That she has suffered Permanent Disability of 52% of both lower legs and thus, the functional disability should have been assessed as 100% and she is entitled to compensation for Future Loss of Salary on account of Disability;
- iii. That she also entitled to addition of Future Prospects;
- iv. That the amount granted under, Special Diet, Conveyance Charges and Attendant Charges and Non-Pecuniary Heads, are inadequate; and
- v. that the cost of the wheelchair, for the future, be also provided.

6. *The Ld. Counsel for Insurance Company has argued that the compensation has been fairly assessed. The Appellant is in the regular in a Private School with periodical enhancement of salary and therefore, no Future Prospects are merited in the circumstances. Insofar as, the compensation enhancement under the Non-Pecuniary Heads is concerned, they may be considered in accordance with law.*

7. Submissions heard and record perused.

Loss of Income during period of Treatment: -

8. *The first aspect for consideration is the Loss of Salary during the treatment period.*

9. The Claimant was working as a teacher in Paramount International School Dwarka New Delhi and was earning about Rs.38,500/- Per Month. However, she as PW-1 deposed due to injuries, she is unable to earn money



and is also unable to discharge any work for her own self or for any other family member. She further deposed that she has lost the opportunity to work on her own because of the permanent injury suffered by her.

10. In the *grounds of Appeal*, she has further clarified that she had not been able to resume her duty from the date of accident *i.e. 08.05.2019 till August, 2023*.

11. This further finds corroboration from the evidence of the summoned witness, ***PW3/Shri Mahesh Chand Omar***, Accountant of Paramount International School who had proved the Authority Letter, Service, Salary and Leave record *Ex.PW3/1 (Colly)*. He deposed that the Appellant/Bharti had been appointed as a Primary Teacher on 30.03.2012 and at the time of accident she was drawing a salary of Rs.38,228/- p.m. Further, the Claimant/Bharti had been ***paid salary only till June, 2019*** and not thereafter, as she has been on leave due to the injuries she has suffered. This is also reflected in the *Salary Record Ex. PW3/1 (Colly)*, which shows that the injured had only received salary till May, 2019.

12. It is, therefore, proved that the Appellant was unable to resume her duty from June 2019 till August, 2023 and is entitled to the salary for the entire period. There is no challenge to her salary being Rs. 38,228/- p.m., on behalf of the Insurance Company.

13. The learned Tribunal has erred in granting the salary only for 12 months. *Therefore, the Appellant is held entitled to a salary of Rs. 38,228/- per month, for 50 months i.e. w.e.f June, 2019 till August, 2023 which comes to Rs.19,11,400/-*



Loss of Future Prospects in lieu of functional Disability: -

Functional Disability: -

14. The Appellant has claimed that both her legs came under the wheel of the bus and got crushed due to which she has suffered **52% of Permanent Physical Disability qua both lower limbs**, as per the Disability Certificate issued by the Medical Board of Rao Tula Rao Memorial Hospital. She has further asserted that as a Primary Teacher for small children in the school, the Appellant has to move around in the class room to attend to each and every toddler student, take care of them and also play with them in the open ground, which is a major part of her duty. However, due to her disability, she is unable to even stand independently, resulting in 100% functional disablement.

15. The Disability Certificate of the Petitioner shows that the stability component is 90% and while her functionality of walking, climbing standing, sitting, kneeling has been assessed as 52% qua both lower limbs.

16. As per her *statement of needs and liabilities filed in 2023*, she has accepted that she is working. Though she was on leave for about 50 months, she rejoined work in 2023 and continues to be in her permanent job in the school, thereafter. Keeping this in mind, evidently, there would be no loss of employment or even her salary in terms of *Section 20 of Rights of Persons with Disabilities Act, 2016* which provides that no Government establishment shall discriminate against any person with disability in any matter relating to employment and thus, ensures that if an employee is disabled during service, the employee is entitled to continued salary, benefits & supernumerary post, along with interests.



17. However, though she continues to be in service, her Disability Certificate states that the Appellant is permanently confined to a wheel chair as she cannot stand, sit cross-legged, take turns or kneel. Thus, the restricted mobility not only reduces her efficiency in discharging her duty as a Primary Teacher, but also impacts her career progression and limits her career options, which needs to be compensated.

18. Thus, considering the reduced and limited mobility in lieu of the 52% permanent disability suffered in respect of both lower limbs, ***the Functional Disability of the Appellant is assessed as 25% on account of the impact on her future career progression and also loss of efficiency of work.***

Addition towards Future Prospects: -

19. It has been submitted by the Appellant that as per her Appointment Letter, her Pay Scale is Rs.9300-34800 which is governed by DSER (Delhi School Education Rules,1972) which proves that she was in a Permanent and stable job on regular basis.

20. Thus, since the Appellant was 28 years old at the time of the accident and in a permanent Job, she is held entitled to ***an addition of 50% towards future prospects***, in terms of the judgement of National Insurance Co. Ltd vs Pranay Sethi, 2017 (16) SCC 680.

21. Thus, the total compensation for Loss of Future Prospects due to functional Disability comes to **Rs. 30,96,500/- (rounded off)** [Rs. 38,228 + Rs.19,114 (added 50% towards Future Prospects) =57,342 X 12 X 18 (Multiplier) X 25/100 (Functional Disability)].



Attendant Charges:-

22. It is claimed on behalf of the Appellant that an amount of Rs.30,000/- has been awarded towards Attendant Charges, which is against the Judgment of the Apex Court in the case of Abhimanyu Pratap Singh vs. Namita Sekhon 2022 (8) SCC 489, where Attendant Charges @ Rs.5,000/- per month for 12 hours was allowed looking into the nature of injuries and the disability. It is, therefore, claimed that the Attendant Charges should have been granted @ Rs.10,000/- per month for 24 hours with a multiplier of 18 which comes to Rs.21,60,000/-.

23. The learned Tribunal did not consider the *Permanent Disability* of the Appellant in the right perspective and committed an error in granting only Rs. 30,000/- as Attendant Charges. Looking at the young age of the Claimant and the nature of injuries suffered by her, the Attendant Charges are, therefore, liable to be enhanced.

24. Considering that the Appellant has suffered 52% of Permanent Disability of both the legs and is unable to stand, it can reasonably be estimated that she would require an Attendant on a regular basis. Though she has claimed that a 24-hour Attendant is required, but considering the totality of circumstances, it can essentially be held that she would require an Attendant for 12 hours a day.

25. The Appellant had not adduced any evidence whatsoever to prove that any Attendant has ever been engaged to take care of her. But it cannot be over looked that even if there is no formal attendant who has been engaged, some family member would be doing extra work to provide support to her.

26. Therefore, taking Rs.5,000/- per month as Attendant Charges, it can



be estimated that the Appellant would be spending Rs. 60,000/- per annum on the Attendant Charges. However, it cannot be overlooked that this is expenditure to be incurred in future and taking into account the interest component on this future expenditure, the amount is taken as 30,000/- p.a. i.e. 50% of the due amount.

27. As per the judgment of *Sarla Verma v. DTC*, (2009) 6 SCC 121 the appropriate multiplier would be 18 and the ***Attendant Charges thus, awarded to the Appellant comes to Rs. 5,40,000/-*** (30,000 X 18).

Conveyance and Special Diet:-

28. The next aspect of consideration is that the Appellant has claimed Rs. 2 lakhs towards Conveyance Charges and Rs. 3 lakhs for Special Diet.

29. The learned Tribunal has granted Conveyance Charges in the sum of Rs.15,000/- and Special Diet in the sum of Rs.15,000/-.

30. Though there is no proof/evidence led by the Appellant had spent Rs. 2 lakhs on conveyance and Rs. 3 lakhs for Special Diet, however, considering that the appellant remained under treatment till about September, 2019, during which period she also remained admitted in the Hospital and keeping in mind that she would have required a special diet for healing, the compensation towards ***Conveyance and Special Diet, are enhanced to Rs.35,000/- each.***

Compensation for Wheel Chair:-

31. The Appellant has asserted that because of the Permanent Disability she has not been able to stand, walk, cross-sitting, take turns, kneel and has



become totally dependent on a fully automatic wheel chair for life which costs around Rs.5.10 lakhs as per the Amazon.com rates and minimum three chairs would be required to be replaced during her lifetime. She may therefore, be granted Rs.15,30,000/- towards the cost of the wheel chair.

32. Pertinently, there is no evidence whatsoever, led by the Appellant in regard to the wheel chair. Her entire testimony in this regard was silent, and no quotation has also been provided. Moreover, she is relying on Amazon Rates, implying that no Chair has ever been bought by her. However, considering her restricted movement as stated in the Permanent Disability Certificate, it cannot be ignored or overlooked that she would be confined to wheel chair for the rest of her life.

33. Considering that the wheel-chair would be required to be bought in future, while the compensation is being granted today with interest, ***she is awarded Rs. 7,00,000/- towards the cost of the fully automatic wheel chair.***

Future Treatment Expenses: -

34. The Appellant has also claimed that she has not been given any future medical expenses which may be allowed in the sum of Rs.15 lakhs. Though in her Affidavit of Evidence, she has stated that she would require Rs. 10 lakhs for future treatment, but has failed to explain the nature of treatment which she may require in future as claimed by her. ***Therefore, no compensation for the future treatment can be granted.***

Additional Medical Treatment: -

35. The Appellant has stated that there was additional medical



expenditure of Rs. 3,65,000/- for continued treatment in the hospital and at home @ Rs.1,000/- per day for misc. expenditure like bandages, pain killers, ointments for which the bills could not be preserved and hence, she is entitled to this additional amount of Rs.3,65,000/- towards the medical expenses. Though, this ground has been raised in the Appeal, but there is not a whisper about any additional expenditure having been incurred on her day to day treatment @ Rs.1,000/- per day. ***Therefore, no compensation towards additional medical treatment can be granted.***

Non-Pecuniary Losses:-

36. The Appellant has further asserted that the compensation for Mental and Physical Shock of Rs. 50,000/-, Pain and Suffering Rs.75,000/- and Loss of Amenities of Life as Rs.10,00,000/- is not sufficient. Furthermore, no compensation has been granted for Loss of Inconvenience, Hardships, Disappointment, Frustration, Mental Stress, Dejection and Unhappiness in Future Life for which she he granted Rs.7,30,000/- each.

37. Pertinently, both the legs of the Appellant got crushed under the rear wheel of the bus. She has been rendered permanently disabled to the extent of 52%.

38. Compensation towards Loss of Amenities do not merit any modification as Rs.10,00,000/- has already been granted which also encompass Disappointment, Frustration, Mental Stress. Therefore, no separate compensation is required to be granted under these Heads.

39. Considering her nature of injuries and permanency thereof, her ***compensation for Mental and Physical Shock is increased to Rs.***



1,00,000/- and Pain & Suffering to Rs. 1,00,000/-.

Rate of Interest:-

40. The last ground of challenge relates to the rate of interest awarded 7.5% p.a. by the Id. Tribunal which is claimed to be on the lower side by the Claimant.

41. The Claimant has not produced any document to show the rate of interest that was prevailing in the year 2018-19. In the absence of any evidence there is no reason to interfere with the rate of interest awarded, @7.5% p.a. by the learned Tribunal.

Relief: -

42. The total amount of Compensation, thus modified is as under :

Sr. No.	Heads	Awarded by the Tribunal	Awarded/Modified by this Court
Pecuniary Loss			
(i)	Expenditure on Treatment	Rs.6,35,170/-	Rs.6,35,170/-
(ii)	Expenditure on Conveyance	Rs.15,000/-	Rs.35,000/-
(iii)	Expenditure on Special Diet	Rs.15,000/-	Rs.35,000/-
(iv)	Cost of Nursing/Attendant	Rs.30,000/-	Rs.5,40,000/-
(v)	Loss of Earning Capacity	NIL	Rs.30,96,500/-
(vi)	Loss of Income	Rs.4,58,736/-	Rs.19,11,400/-
(vii)	Wheel Chair	NIL	Rs 7,00,000/-
Non-Pecuniary Loss			
(i)	Compensation for	Rs.50,000/-	Rs.1,00,000/-



	mental and physical shock		
(ii)	Pain & Suffering	Rs.75,000/-	Rs.1,00,000/-
(iii)	Loss of amenities of life	Rs.10,00,000/-	Rs.10,00,000/-
TOTAL COMPENSATION		Rs. 22,78,906/-	Rs. 81,53,070/-

43. Thus, the total compensation granted to the Claimant is enhanced as **Rs. 81,53,100/- (rounded off)** along with interest @7.5% per annum from the date of the Claim till deposit of the amount, in terms of the Award dated 26.10.2023 passed by the learned Tribunal.

44. The excess amount be deposited within three weeks.

45. The Appeal is accordingly disposed of along with the pending Application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 16, 2024
RS/VA