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

% **Judgment reserved on : 07 February, 2024**
Judgment pronounced on : 01 April, 2024

\+ MAC.APP. 340/2019

RELIANCE GENERAL INSURANCE CO LTD ..... Appellant
Through: Mr. A.K. Soni, Advocate.

versus

VIJAY LAXMI SHARMA & ORS ..... Respondents
Through: Mr. Mohit Monga, Advocate.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

JUDGMENT

1. The appellant/Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988[1] assailing impugned common judgment-cum-award dated 23.01.2019 passed by the learned Presiding Officer, Motor Accident Claims Tribunal, Rohini Courts, Delhi[2], whereby the claim of the respondent No.1/injured/claimant seeking compensation under Section 166 read with Section 140 of the M.V. Act was allowed and she has been granted a total compensation of Rs. 45,15,500/- along with interest @ 9% per annum from the date of institution of the claim petition till realization.

FACTUAL BACKGROUND:

[1] M.V. Act
[2] Tribunal

2. Shorn of unnecessary details, it is borne out from the record that the respondent No.1/injured/claimant sustained grievous injuries in a motor accident that occurred on 16.12.2013, in which even her husband sustained fatal injuries and she underwent prolonged medical treatment. Eventually, her medical disability certificate (Ex.PW6/9) brought out that the injured/claimant has suffered 54% permanent disability in relation to amputation of her left leg and right hand.

3. First things first, there is no dispute that the motor accident occurred due to rash and negligent driving of the offending vehicle that was being driven by respondent No.2 and that the offending vehicle was evidently insured by the registered owner/respondent No.3 for third party risks.

4. Learned counsel for the appellant/Insurance Company has urged that the amount of compensation awarded by the learned Tribunal is on the higher side, and in particular, the learned Tribunal has wrongly awarded the compensation for loss of income to the tune of Rs. 5,04,192/- as it has come in the evidence that she has been getting pension after getting retired as a PGT (Hindi) from a government school. Further, it is urged that based on the pensionary benefits, the loss of functional disability has been wrongly calculated @ 84% with respect to the whole body.

ANALYSIS AND DECISION

5. Having heard the learned counsel for the appellant/Insurance Company and learned counsel for respondent No.1/injured/claimant and on perusal of the entire record of the case including digitized Trial Court Record (TCR), at the outset, I find that the learned Tribunal has

not correctly assessed the quantum of compensation under various items/heads and the same requires interference at this appellate stage.

6. First things first, the learned Tribunal has awarded the compensation under different items/heads, which are depicted in a tabular form hereunder:

1.	Medical Expenses	Rs. 9,84,628/-
2.	Loss of income	Rs. 5,04,192/-
3.	Pain and suffering	Rs. 3,50,000/-
4.	Loss of general amenities and enjoyment of life	Rs. 3,50,000/-
5.	Conveyance, special diet, future cost of medicines and attendant charges for rest of life	Rs. 2,44,064/-
6.	Loss of future income	Rs. 14,82,325/-
7.	Compensation towards expenses for future treatment	Rs. 6,00,000/-
	Total	**Rs. 45,15,209/-**
		Rs. 45,15,500/- (Rounded off figure)

REIMBURSEMENT OF MEDICAL EXPENSES

7. Insofar as the compensation for reimbursement of medical expenses is concerned, it would be pertinent to reproduce the observations made by the learned Tribunal, which reads as under: -

> "35. PW3 Sh. Bhamesh Mittal is the proprietor of Mittal Medicos, running Chemist Shop. He deposed that bill dated 28.12.13 (Ex. PW3/1) was issued by him in favour of Ms. Vijay Laxmi. During his cross-examination on behalf of respondent no. 2, he deposed that he had not brought bill book containing carbon copy of aforesaid bill but volunteered that he could produce the same. He denied the suggestion that no such bill was issued by him. Respondents no. 1 & 3 preferred not to examine this witness despite grant of opportunity.
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> 36. PW4 Ms. Anushree is the officer of M/s. Ottobock Healthcare India Pvt. Ltd. She produced authority letter (Ex. PW4/1) in her favour and deposed that bills Ex. PW4/2 to Ex. PW4/9 were issued by her said company which deals in artificial limbs, hands and legs

and said artificial implants have two years warranty and average life of 3-4 years. She also deposed that service cost of prosthesis is around Rs. 40,000/- to Rs. 50,000/- annually. However, the testimony of this witness remained incomplete as she did not appear on subsequent date during the course of inquiry. In her place, PW9 Ms. Ekta Sharma, Sr. Associate Prosthetist and Orthotist of same company, appeared as witness. She produced authority letter Ex. PW9/1 in her favour. She testified that Ms. Vijay Laxmi had purchased Prosthesis in respect of right upper limb from her company vide bill dated 14.07.17 of Rs. 2,09,000/-. She exhibited the said bill as Ex.PW9/2(which was previously exhibited as Ex. PW4/5). She also deposed that said patient had also purchased Prosthesis in respect of left lower limb from her company vide bill dated 17.04.14 of Rs. 1,09,250/-. She exhibited the said bill as Ex. PW9/3(which was previously exhibited as Ex. PW4/6). She also exhibited receipts regarding advance payment as Ex.PW9/4(colly)(which were previously exhibited as Ex. PW4/2 to Ex. PW4/9). She also produced relevant bills regarding purchase of cosmetic stockings and accessories for artificial limbs by said patient from her company and exhibited those bills as Ex. PW9/5(colly). During her cross-examination on behalf of insurance company, she deposed that there was fixed price list in respect of different prosthesis manufactured and sold by their company and those prices keep on revising from time to time but she did not produce said price list for the year 2014. However, she admitted that prices in respect of such kind of prosthesis may vary from one manufacturing company to another. Respondents no. 1 &2 preferred not to cross-examine this witness despite grant of opportunity.

37. PW5 Sh. Pyare Singh is the Medical Record Officer of Sir Ganga Ram Hospital. He produced medical treatment record and medical bills concerning victim Smt. Vijay Laxmi Sharma. He deposed that said patient remained admitted in said hospital from 16.12.13 to 28.12.13. He exhibited the treatment record and medical bills as Ex. PW5/1 (colly). He has not been cross-examined at all on behalf of the respondents.

38. PW7 Sh. Yogesh Goel is the proprietor of M/s. Surya Medicos, running Chemist Shop. He produced relevant cash memo book for the period from 16.06.14 to 25.06.14 and deposed that as per said record, cash memo dated 20.06.14 (which is part of Ex. PW6/6 colly) of Rs. 8,820/- was issued by him. He also deposed that cash memo nos.-625, 3405, 3429 and 3459, which were part of Ex. PW6/6(colly), were also issued by his shop and same were in his handwriting. During his cross-examination on behalf of insurance

company, he denied the suggestion that aforesaid bills were not issued by him. Respondents no. 1 &2 preferred not to examine this witness despite grant of opportunity.

39. PW6 Smt. Vijay Laxmi Sharma i.e. injured herself, has deposed in her evidence by way of affidavit (Ex. PW6/A) that after the accident, she was taken to BJRM Hospital, Jahangir Puri, where she was medically examined. Thereafter, she was shifted to Sir Ganga Ram Hospital, where she remained admitted from 16.12.13 till 28.12.13. She also deposed that even after her discharge from the said hospital, she visited the said hospital on OPD basis. She further deposed that her left leg and right hand were amputated due to the injuries sustained by her in the accident. She deposed to have spent considerable amount on her treatment. She also deposed that since her left leg and right hand were amputated, same were fitted with artificial limbs after purchasing the same from M/S Ottobock Healthcare India Pvt. Ltd. She also deposed that she had sustained permanent disability to the tune of 84% in relation to left lower limb and right upper limb as per Disability Certificate (Ex. PW6/9) issued by Disability Board of BSA Hospital. She has relied upon medical bills (Ex. PW3/1, Ex.PW5/1, Ex. PW6/5 colly & Ex. PW6/6 colly). During her cross-examination on behalf of insurance company, she deposed that she did not get reimbursement of her medical bills from her employer. Her husband was also not having medical reimbursement facility from his employer. She denied the suggestion that since they were having medical reimbursement facilities from their employers, photocopies of medical bills and treatment record were filed by her or that her medical expenses were reimbursed by their employers. She also denied the suggestion that relevant record relating to cost of artificial limbs as filed on record, were inflated. Respondents no. 1 &2 did not cross-examine this witness on this aspect.

40. It is evident from the aforesaid discussion that the respondents could not create any doubt on the authenticity and genuineness of aforesaid medical bills. They have also not led any evidence in rebuttal. The injured has filed medical bills including bills regarding purchase of her implants and accessories thereof, to the tune of Rs. 9,84,628/- only. Accordingly, a sum of Rs. 9,84,628/- is awarded to her under this head."

8. A careful perusal of the aforesaid observation would show that the injured/claimant placed on the record all the relevant medical treatment records as well as the bills/invoices towards purchase of

medicine including physiotherapy. But there is no evidence on record so as to show that she was entitled to reimbursement of the medical bills from her employer and therefore, this Court does not wish to interfere with the award of compensation under this head.

LOSS OF INCOME

9. As regards compensation on account of "loss of income", since the claimant has been receiving a monthly pension of Rs. 21,008/- at the time of accident, which continued to be credited in her account during her prolonged treatment, the award of compensation for loss of income is certainly unpalatable. Hence, the amount of compensation of Rs. 5,04,192/- towards loss of income, which has been reckoned as per the monthly pension of Rs.21,008/- for 24 months, is hereby set aside.

LOSS OF FUTURE INCOME/FUNCTIONAL DISABILITY

10. As far as the compensation awarded for loss of future income or functional disability is concerned, it would be expedient to reproduce the findings recorded by the learned Tribunal, which reads as under: -

> "54. As already stated above, the petitioner is shown to have sustained 84% permanent disability in relation to her left lower limb and right upper limb. Same is quite evident from Disability Certificate dated 02.07.15 of Medical Board of BSA Hospital, Rohini, Delhi. The petitioner has also testified in this regard while examining herself as PW6 during inquiry. Sine has not been cross-examined by the respondents on this aspect.
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> 55. As per the testimony of PW8 Dr. Meenakshi Sidhar, the petitioner was found to have suffered 84% permanent disability in relation to left lower limb and right upper limb. She has testified that Disability Certificate(Ex. PW6/9).was issued by the Disability Board of BSA Hospital. She deposed that Medical Board of BSA Hospital had assessed the disability of the said patient to be permanent in nature and same was not likely to improve. She also

produced the calculation chart prepared at the time of assessment of her disability and exhibited copy thereof as Ex.PW8/1. She further deposed that the aforesaid patient had suffered amputation below elbow in respect of her right upper limb and below knee in relation to left lower limb. Respondents did not cross-examine this witness despite grant of opportunity.

56. The disability certificate(Ex. PW6/9) of injured would reveal that she had suffered 84% permanent disability in relation to her left lower limb and right upper limb. It is mentioned therein that her case was that of below knee amputation of left lower limb and below elbow amputation right upper limb. It is relevant to note that the petitioner had retired as PGT(Hindi) from government aided school at the time of accident. Same is quite evident from the ocular testimony of PW6 and the affidavit (which is part of DAR Ex. PW1/1 colly) filed on record. Apart from the fact that it would not be possible for petitioner to engage herself in any kind of avocation requiring movements of upper and lower limbs. It is also important to note that her right upper limb below elbow, has been amputated. It is a matter of common knowledge that normally a person is right handed person. There is nothing on record to show that petitioner herein is not right handed person. That being so, she would not be able to perform even her day to day activities like taking bath, changing clothes, eating food, ironing of clothes etc. Keeping in view the overall facts and circumstances of the case including the nature of injuries sustained by petitioner and her nature of work at the time of accident, h^ functional disability is taken as 84% with regard to whole body. ***(Reliance placed on "IFFCO Tokio General Insurance Company Limited Vs. Arjun & Ors.", MAC APP. No. 01/2013, decided on 04.01.2018, "Oriental Insurance Company Limited Vs. Manjeet Singh & Ors. ", MAC APP No. 359/09, decided on 10.04.17 and "Reliance General Insurance Company Limited Vs. Maiti Devi & Ors.,", MAC APP No. 572/12, decided on 20.05.15, by Hon'ble Delhi High Court)***.

57. In copy of Voter I Card (Ex. PW6/10) of petitioner, her age is mentioned as 55 years as on 01.01.2005. The date of accident is 16.12.2013. In view of said document, her age was about 64 years as on the date of accident. Hence, the appropriate multiplier would be 7 in this case.

58. It has been argued on behalf of Insurance company that the petitioner has not suffered any loss of income after the accident as she was retired teacher and is getting monthly pension from her

employer. Hence, no compensation should be awarded to the injured under this head. Per contra, it has been argued on behalf of petitioner that she is entitled to compensation under this head as she would not be able to effectively do any avocation after her retirement from the service. However, it has been fairly conceded during the course of arguments that the petitioner has been getting the pension from her employer.

59. Similar question directly arose for consideration before Hon'ble Delhi High Court in recent case titled as ***"Raj Kumar Malik V/s. United India Insurance Company Limited & Ors., bearing MAC APP No. 161/2011 decided on 10.10.17***. In the said matter, the injured/appellant was a government servant and had suffered permanent disability to the extent of 74% in relation to right upper limb. While dealing with the contention raised on behalf of claimant that no compensation for loss of earning capacity in future has been awarded, Hon'ble Delhi High Court held in para 5 of the order that loss of earning capacity post retirement, had to be considered by the award of compensation and for such purposes, the Tribunal could adopt the multiplier of 9. It further held that in such calculation,, however, it would also need to be kept in mind that the claimant would have earned 50% of the last emoluments drawn as pension and thus, the consequent functional disability will have to make up for the loss against the balance. Similar view has been taken by Hon'ble Delhi High Court in ***"National Insurance Co. Ltd. Vs. Hari Om Const. & Ors., bearing MAC APP No. 464/2011 decided on 03.11.17***.

60. Now, turning back to the facts of the present case. As already noted above, the petitioner had retired as PGT(Hindi) from government aided school. As per her bank account statement (which is part of Ex.PW6/12 colly), she was getting monthly pension of Rs. 21,008/- at the time of accident. In the absence of last drawn salary amount of petitioner being available on record, her monthly pension is being taken into consideration for calculating loss of future income. Applying the ratio of law discussed by Hon'ble Delhi High Court in the above cited decisions, the loss of future income of petitioner comes out to Rs. 14,82,325/- (rounded off)(Rs.21,008/- X 84/100 X 12 X 7). Thus, a sum of Rs. 14,82,325/- is awarded in favour of petitioner under this head."

11. Thus, what the learned Tribunal has done is that it has reckoned the monthly pension as a notional amount and has reckoned the

disability @ 84%. Evidently, the injured/claimant was about 64 years of age and she has suffered traumatic amputation of her left leg and right upper arm. However, at the cost of a little insensitivity, the disability does not afford a ground for reckoning the loss of future income or functional disability or loss of future earning in any sense of the matter. Therefore, this amount of compensation has to go away and, accordingly, needs to be set aside.

ENHANCEMENT OF COMPENSATION UNDER OTHER HEADS:

ATTENDANT / NURSING CHARGES:

12. All said and done, having regard to the nature of disability suffered, there should be a perceptible enhancement in compensation under the head "Pain and suffering" and "Loss of general amenities and enjoyment of life". Accordingly, the same is enhanced to Rs. 5,00,000/- each from Rs. 3,50,000/-. There is also an impending need for the services of an attendant. Although the injured/claimant has categorically deposed that she had been taking nursing care facility and incurring Rs. 900 per day, no documents have been placed on the record with respect to the same. Having regard to the traumatic amputation of left leg and right arm, it is, but natural that the injured/claimant would be in dire need of the services of an attendant throughout her life. There is no dispute with regard to the compensation awarded towards reimbursement and also for paying the attendant charges throughout her life at Rs. 2,44,064/-. But considering the age of the injured/claimant, it would be expedient that the charges towards an attendant be increased by reckoning the

minimum wages @ Rs. 8,500/- per month for a skilled workman. Further, considering the requirement for at least two such attendants per day, the figure would come to Rs. 17,000/- per month and the annual amount would come to Rs. 2,04,000/- per annum. Further, applying the multiplier of '7', a sum of Rs. 14,28,000/- is awarded towards charges for having future attendants throughout her life.

CONVEYANCE / TRANSPORTATION CHARGES

13. It is in the testimony of the injured/claimant that she had to incur a considerable amount on conveyance charges by hiring ambulances for going to the hospital for regular checkups. In this regard, she examined PW-2/Sh. Manish Kumar, Manager of Life Savers Ambulance Services, who verified the bills Ex.PW2/2 to Ex.PW2/7 towards ambulance services, which came to Rs. 17,200/- and the learned Tribunal granted a sum of Rs. 25,000/- towards conveyance/transportation charges. Thus, no interference is called for in the said amount.

DIETARY EXPENSES:

14. Further, it is common sense and fair to assume that the injured/claimant must have spent a considerable amount on her dietary requirements in the past and would be required to spend the same in the future, which may be at least Rs. 3,000/- per month, totalling annually to Rs. 36,000/-; and applying the multiplier of 7, the compensation towards dietary expenses comes to Rs. 2,52,000/-. There is no challenge to the quantum of compensation awarded towards future medical treatment, which otherwise appears to be quite just and fair considering the age of the claimant and the nature of the

difficulties she would be facing for having been rendered almost immobile and bedridden, which invariably leads to several bodily complications.

ISSUE OF COMPENSATION TOWARDS INTEREST

15. Suffice to state that the interest part too requires interference. It has been a consistent view of this Court that interest should normally be reckoned @ 7.5% for which reference can be invited to an earlier decision of this Court in the case of **The Oriental Insurance Co. Ltd. v. Sohan Lal**[3], in which this Court relied upon the decision in **National Insurance Co. Ltd. v. Yad Ram**[4] and observed as under:

> "This affirms the view of the learned Single Judge that there is no fixed rate of interest on compensation that can be applied under the M.V. Act and the grant of appropriate rate of interest shall be governed by several factors which are to be determined on a case-to-case basis. In the instant case, the motor vehicle accident had occurred on 01.07.2018 and the claim petition was filed on 30.08.2018. The award was passed on 03.07.2023, i.e., within 05 years from date of filing of the claim petition. Considering that due to the Covid-19 pandemic that brought the world to a standstill, there has been an evident delay in adjudication. It is, thus a fit case where the rate of interest should be brought down to 7.5% p.a. The award of interest @7.5% p.a. along-with the awarded compensation, would also commensurate with the rate of interests, which are being given by the nationalised banks on Fixed Deposit Receipts as per Reserve Bank of India guidelines."

16. Accordingly, the total compensation is worked out as under:

S.No.	Heads	Amount
1.	Medical Expenses	Rs. 9,84,628/-
2.	Loss of income	Nil
3.	Loss of future income	Nil
4.	Pain and suffering	Rs. 5,00,000/-
5.	Loss of general amenities and enjoyment	Rs. 5,00,000/-

[3] MAC APP. 70/2024 decided on 19.03.2024
[4] 2023 SCC OnLine Del 1849

	of life	
6.	Attendant charges for rest of the life	Rs. 14,28,000/-
7.	Conveyance	Rs.25,000/-
8.	Special dietary expenses	Rs. 2,52,000/-
9.	Compensation towards expenses for future medical treatment	Rs. 6,00,000/-
	Total	**Rs. 42,89,628**

17. In view of the foregoing discussion, the present appeal is partly allowed to the effect that the impugned common judgment-cum-award dated 23.01.2019 is set aside and instead, the injured/claimant shall be entitled to a total compensation of Rs 42,89,628/- (Rupees Forty Two Lacs Eighty Nine Thousand Six Hundred Twenty Eight Only) with interest @ 7.5% p.a. from the date of filing of the petition till realization.

18. Perusal of the record shows that 50% of the amount of compensation has already been released to the injured/claimant *vide* order dated 06.05.2019 and it is directed that the compensation arrived at by this Court with accrued interest be deposited with the learned Tribunal within four weeks from today and thereafter, the amount of compensation be released to the injured/claimant in terms of the directions passed by the learned Tribunal.

19. The present appeal stands disposed of accordingly.

DHARMESH SHARMA, J.

APRIL 01, 2024

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