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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 20th November, 2024***+ **MAC.APP. 115/2022**

RAHUL

.....Appellant

Through: Counsel for Appellant (appearance
not given)

versus

UNITED INDIA INSURANCE CO LTD & ORS.....Respondents

Through: Ms. Manisha Singh, Mr. George
Pothan Pothan Poothicote, Mr.
Prakarsh Kumar and Ms. Jyoti Singh,
Advocates for R3.**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. An Appeal under Section 173 of the Motor Vehicle Act, 1988 has been filed by the Injured Rahul seeking enhancement of the compensation granted in the sum of Rs. 9,82,953/- along with interest @ 9% p.a. on account of grievous injuries suffered in the Road accident, vide the Award dated 24.03.2021 *in the* Claim Petition under Section 166 and 140 of the Motor Vehicle Act, 1988, filed by the Appellant, Rahul.

2. The enhancement of compensation is sought on the following grounds: -

- (i) that the injured suffered *Permanent Disability of 49%* in relation to both lower limbs, but his *Functional Disability has been taken as 20%* when it should have been assessed as 100%;



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- (ii) that he was *matriculate as per his Certificate 'Mark A'* while the *Minimum Wages* have been taken. Moreover, he was working in Delhi as Supervisor. Thus, the minimum wages of Delhi, should have been taken for calculating the Loss of Income. Moreover, the accident occurred on 30.03.2016 and the minimum wages got revised on 01.04.2016. Therefore, the revised minimum wages must be taken;
 - (iii) *The Future Prospects @40%* should have been granted, which has not been considered; and
 - (iv) Enhancement of compensation under *Non-Pecuniary Heads* on account of Marriage Prospects and Pain and Suffering.
3. An opportunity was given to the Respondents to address the arguments.
4. **Submissions heard.**
5. **Briefly stated**, Sh. Rahul was travelling as a passenger in TSR from Kashmiri Gate to Hazarat Nizamuddin, on 30.03.2016 at 05:40 PM. When the TSR reached at Sarai Kale Khan red light, suddenly a bus bearing no. DL-1PC-9273 came from the side of Ashram after jumping red light, at a very high speed and in a rash and negligent manner and hit the TSR, as a result of which the Appellant received grievous injuries in the accident.
6. The Appellant was initially taken to AIIMS Trauma Centre where doctors examined and prepared MLC and thereafter, referred him to Safdarjung Hospital where he remained from 31.03.2016 till 04.04.2016. Thereafter, he was admitted in Municipal Corporation of Greater Mumbai, KEM Hospital on 10.02.2017 and discharged on 22.04.2017 where he was operated 5 times due to infection in left leg. The Appellant suffered 49%



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Permanent Disability in relation to his both lower limbs.

7. **FIR No. 168/2016** under Sections 279, 337, 338 IPC P.S. was registered on 30.03.2016, against Respondent No. 2.

Loss of Income during Treatment: -

8. The Claimant has deposed that he was working as a Supervisor but in his evidence, he has failed to produce any document to support that he ever worked as a supervisor.

9. In his cross-examination, he admitted that he had not filed his Salary Certificate on record. Moreover, he admitted that his native place is House No. 149, Mohalla Ratna, Jaitpur, District Ambedkar Nagar, Uttar Pradesh. Though, he asserted that he was working as a supervisor under a contractor with Godrej Company at Okhla and earning Rs. 15,000/- per month but admittedly, no document whatsoever has been adduced. His Aadhar Card, Ex.PW-1/1 also shows him as a resident of Ambedkar Nagar, Uttar Pradesh.

10. The learned Tribunal has thus, rightly assessed the income of the injured as per Minimum Wages in Uttar Pradesh. It is further contended on behalf of the Appellant that he was matriculate as per his Certificate as 'Mark A'. Learned counsel on behalf of the Insurance Company had objected to consideration of this Matriculate Certificate since it was not proved by producing the original. It cannot be overlooked that these are enquiry proceedings to determine the just compensation. The authenticity of this matriculation Certificate has not been challenged in the cross-examination by the Insurance Company. The injured is taken to be a matriculate. Pertinently, the accident had been occurred on 30.03.2016 and the Minimum Wages got revised on 01.04.2017. The minimum wages in Uttar Pradesh for matriculate as on 01.04.2017 is **Rs. 7400.46** which is taken



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as the income of the injured.

11. The *second aspect for consideration* is that as per the medical record, the Petitioner/Claimant remained under treatment from the date of accident till August, 2018. He underwent various complications in the year 2017-2018 and remained under the treatment for removal of implants and such connected complications.

12. The Loss of Income has been granted for a period of six months but considering the prolonged treatment, the same is enhanced for two years and is calculated as **Rs. 7400.46 X 24 = Rs. 1,77,611.04/-**.

Loss of Future Income : -

Functional Disability : -

13. The next aspect on which the compensation is sought to be enhanced is that he had suffered the Permanent Disability suffered by the Petitioner was 49% of both lower limbs since his Functional Disability has been taken as overall 20% even though he was working as a supervisor and the same should have been calculated as 100%.

14. According to the Permanent Disability Certificate dated 04.11.2019 issued by *Pandit Madan Mohan, Malviya Hospital, New Delhi*, the Certificate states that the injured had suffered Physical Disability of 49% in relation to his both lower limbs. Except from the testimony of the injured that he was working as a supervisor, there is no further details given by the Petitioner, to corroborate that he has been rendered absolutely incapable of doing any work. No doctor has been examined to explain the nature of the injury. ***Having regard to the Permanent Disability of 49%, his Functional Disability is hereby taken as 50%.***

Future Prospects: -



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15. He was entitled to Future Prospects @40% as has been held in the Case of *National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680, which are hereby awarded.

16. **The compensation towards the Total Loss of Future Income, is hereby re-calculated as under: - $7400.46 \times 12 \times 140/100 \times 18 = \text{Rs. } 22,37,899.1/-$.**

Non-Pecuniary Heads: -

17. The Petitioner has further asserted that the compensation under the non-Pecuniary Heads on account of Pain and Suffering is liable to be enhanced and the compensation on account of Loss of Marriage Prospects be granted.

18. The learned Tribunal has granted compensation for *Mental and Physical Shock* in the sum of Rs.1,00,000/- and *Pain and Suffering* separately for Rs.50,000/- in all Rs.1,50,000/- has been granted. ***Having regard to the prolonged treatment of about 2 years and the nature of the Disability, the compensation for Pain and Suffering is hereby enhanced to Rs.1,50,000/-***. Though, it has been asserted that nothing has been granted for Loss of Marriage Prospects but a sum of Rs.1,00,000/- has already been granted, which does not need any further enhancement. Likewise, Rs.1,00,000/- has been granted for Loss of Amenities of Life, which also need not be enhanced. ***The compensation under these Heads, does not merit any interference.***

Relief: -

19. In view of the above observations, the modified and enhanced final amount of compensation is encapsulated in the tabular chart as under: -

Sr.	Heads	Awarded by	Granted by this
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No.		the Tribunal	Court
A.	Pecuniary Loss:		
(i)	Expenditure on treatment	Rs. 64,113	Same
(ii)	Expenditure on conveyance	Rs. 20,000	Same
(iii)	Expenditure on Special diet	Rs. 20,000	Same
(iv)	Cost of nursing/attendant	Rs. 20,000	Same
(vi)	Loss of Income	Rs. 40,884	Rs.1,77,611.04/-
(vii)	Any other loss which may require any special treatment or aid to the injured for the rest of her life.	NIL	-
B.	Non-pecuniary Loss:		
(i)	Compensation for mental and physical shock	Rs. 1,00,000	Same
(ii)	Pain and Suffering	Rs. 50,000	Rs. 1,50,000/-
(iii)	Loss of amenities of life	Rs. 1,00,000	Same
(iv)	Disfiguration	Rs. 1,00,000	Same
(v)	Loss of Marriage Prospects	Rs. 1,00,000	Same
(vi)	Loss of earning, inconvenience, hardships, disappointment, frustration, mental distress, dejection, and unhappiness in future life etc.	NIL	Same
C.	Disability resulting in loss of earning capacity		
(i)	Percentage of disability assessed and nature of disability as permanent or temporary	49%	50%
(ii)	Loss of amenities or loss of expectation of life span on account of disability	NIL	NIL
(iii)	Percentage of loss of earning capacity in relation to disability.	25%	40%
(iv)	Loss of future income: (Income x %earning capacity x Multiplier)	Rs. 3,67,956	Rs. 22,37,899.1 (7400.46 X 140/100 X 12 X 18)
	TOTAL COMPENSATION	Rs. 9,82,953/-	Rs. 30,90,000/-



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	INTEREST AWARDED	9%	9%
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20. The total amount of compensation is thus modified to Rs. **30,90,000/-** along with interest @ 9% p.a. from the date of Claim till the date of disbursement, as per the terms of the impugned Award.

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

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 20, 2024/RS