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

% **Date of decision: 2nd May, 2024**

\+ MAC.APP. 230/2024

KOTAK MAHINDRA GENERAL INSURANCE CO. LTD ..... Appellant

Through: Mr. Sameer Nandwani, Adv.

versus

AFROJ & ORS. ..... Respondents

Through: Mr. Pankaj Gupta, Adv. for respondent No.1

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. This hearing is being conducted through hybrid mode.

CM APPL. 25649/2024 (Ex.)

2. Allowed, subject to all just exceptions.

3. The application stands disposed of.

MAC.APP. 230/2024 and CM APPL. 25648/2024 (Stay)

4. The appellant/Insurance Company has preferred this appeal in terms of Section 173 of the Motor Vehicles Act, 1988[1] assailing the impugned judgment-cum-award dated 07.02.2024 passed by the learned Presiding Officer, Motor Accident Claims Tribunal, North West District, Rohini Courts, Delhi[2].

5. Learned counsel for the respondent No.1/claimant-injured is present on advance notice.

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[1] Act
[2] Tribunal

6. Having heard the learned counsels for the rival parties present and on perusal of the record, this Court finds that the present appeal can be conveniently disposed of without any further delay.

7. Shorn of unnecessary details, the respondent No.1/claimant-injured sustained grievous injuries in a motor accident that occurred on 15.02.2017 involving a Tractor Eicher bearing registration No. HR-13-L-1656[3], belonging to the respondent No.2. A claim petition was filed in terms of Section 166/140 of the Act and the learned Tribunal gave a finding that it was the driver of the offending vehicle who was responsible for causing the accident that resulted in grievous injuries to the respondent No.1/claimant-injured. As regards the quantum of compensation, the learned Tribunal awarded a sum of Rs. 19,48,000/- as compensation along with interest @ 9% from the date of filing of the DAR[4] i.e. 03.06.2017 till the actual payment and the liability to pay the compensation has been fastened on the shoulders of the appellant/insurance company.

8. Mr. Sameer Nandwani, learned counsel for the appellant/insurance company has urged that while the learned Tribunal rightly discarded the evidence that the respondent No.1/claimant-injured was earning Rs.18,000/- per month, it has erroneously reckoned the minimum wages provided for a matriculate person in Delhi @ Rs. 16,182/- per month. Referring to the Notification[5] issued by the Government of NCT of Delhi (Labour Department), the learned Tribunal has pointed out that the minimum

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[3] Offending vehicle
[4] Detailed Accident Report
[5] F.No.12(142)/13/mw/Lab/2124 dated 30.09.2016

wage provided for a matriculate but not a graduate was pegged at Rs.11,622/- per month. Learned counsel for the appellant/insurance company has further pointed out that the learned Tribunal has awarded a sum of Rs. 8,00,000/- towards loss of general amenities and enjoyment of life assuming that it should be in the realm of Rs. 50,000/- per month and applying the multiplier of '18'. Lastly, an issue has been raised about the interest having been awarded @ 9% per annum, which is claimed to be on the higher side.

9. Learned counsel appearing for the respondent No.1/claimant-injured fairly concedes that the impugned judgment-cum-award requires modification insofar as reckoning of the minimum wages for a matriculate applicable on the date of accident in Delhi are concerned. However, learned counsel for the respondent No.1/claimant-injured has urged that the compensation of Rs. 8,00,000/- towards loss of amenities and enjoyment of life has been rightly reckoned, and a rather paltry compensation of Rs. 1,00,000/- has been awarded towards "pain and suffering" and no compensation has been awarded towards "loss of marriage prospects" considering that the respondent No.1/claimant-injured was 24 years of age on the date of accident and he has suffered a permanent disability to the extent of 26% in relation to his right foot, who would face serious prejudice in his employability and would affect his earning capacity.

10. First things first, as regards the minimum notional income/earning of the respondent No.1/claimant-injured is concerned, the same has to be reckoned as per the minimum wages provided for a matriculate, which was fixed at Rs. 11,622/- per month. Further, the

learned Tribunal has wrongly held that the decision in the case of **National Insurance Co. Ltd. v. Pranay Sethi**[6] has provided for disallowing the future prospects and the same is to be reckoned @ 40% and thus, the annual income would come to Rs. 1,95,250/-. The learned Tribunal has rightly reckoned the functional disability/loss of earning capacity to be @ 16%, which comes to Rs. 31,240/- upon which, the multiplier of '18' shall be applicable, and therefore, the compensation towards loss of functional disability/earning capacity shall come to Rs. 5,62,320/-. As regards the loss of amenities and enjoyment of life, the learned Tribunal had an occasion to observe as under:-

> "30. As already mentioned above, there is sufficient evidence on record i.e. disability certificate Ex. PW 2/A to establish that the petitioner is suffering from 26% Loco Motor Disability with regard to his right lower limb. Considering the aforesaid, it is quite apparent that petitioner would not be able to enjoy general amenities of life after the said accident, during rest of his life and his quality of life has been definitely affected. Hence, considering the nature of injuries suffered by the petitioner, the yearly loss of general amenities and enjoyment of life is considered to be for Rs. 50,000/- per year and the same is multiplied with the multiplier of 18. Hence, he is entitled to a sum of Rs. **8,00,000/-** towards loss of general amenities and enjoyment of life to the petitioner. "

11. As per the disability certificate (Ex.PW-2/A), the injury suffered by respondent No.1/claimant-injured in the right lower limb is a locomotive disability. It is but evident that the respondent No.1/claimant-injured would find it very difficult to walk properly, run and even climb stairs. To my mind, the learned Tribunal having regard to the young age of the respondent No.1/claimant-injured and

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[6] (2017) 16 SCC 680

considering his whole future ahead, has awarded just and fair compensation, and therefore, this Court is not inclined to interfere with the quantum of compensation awarded towards loss of general amenities and enjoyment of life, which has been reckoned at Rs. 8,00,000/-.

12. This Court in several cases has taken a consistent view that it has *suo moto* powers to enhance the amount of compensation wherever it has considered it necessary to award just and fair compensation to the victim/injured. In this regard, reference can be invited to several decisions of this Court in **United India Insurance Co. Ltd. v. Jagat**[7], **National Insurance Co. Ltd. v. Asit Kumar**[8] and **National Insurance Co. Ltd. v. Anil Kumar**[9].

13. Hence, this Court *suo moto* considers that the amount of compensation awarded towards pain and suffering is on the lower side and the same is enhanced to Rs. 2,50,000/- from earlier amount of compensation given at Rs. 1,00,000/-. Further, a sum of Rs. 2,50,000/- is awarded towards "loss of marriage prospects". Accordingly, the compensation is worked out as under:-

Sr. No.	**Heads of compensation**	**Amount**
1.	Medical expenses	Rs. 1,07,308/-
2.	Pain and suffering	Rs. 2,50,000/-
3.	Loss of actual earning	Rs. 97,092/-
4.	Loss of earning capacity with disability @ 16%	Rs. 5,62,320/-
5.	Conveyance/attendant charges,	Rs. 60,000/-

[7] 2024 SCC OnLine Del 2762
[8] MAC. APP. 440/2013
[9] MAC. APP. 660/2013

	special diet	
6.	Loss of amenities and enjoyment of life	Rs. 8,00,000/-
7.	Loss of marriage prospects	Rs. 2,50,000/-
	Total	**Rs. 21,26,720/-**

14. Lastly, coming to the issue of compensation granted in the nature of interest, the DAR was filed on 03.06.2017 and the impugned judgment-cum-award has been rendered on 07.02.2024. Evidently, no amount has been offered by the appellant/insurance company during the course of proceedings and the respondent No.1/claimant- injured is getting the compensation after almost five years. Therefore, this Court is not inclined to tinker with the rate of interest granted @ 9% from the date of filing of the DAR i.e. 03.06.2017 till realization.

15. The appeal filed by the appellant/insurance company is hereby dismissed. However, the amount of compensation granted by the learned Tribunal is hereby modified and enhanced as discussed above.

16. It is directed that the amount of compensation be deposited with the learned Tribunal with accrued interest 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 this judgment till realization. The amount of compensation on deposit, be released to the respondent No.1/claimant-injured forthwith in terms of the directions passed by the learned Tribunal.

17. The present appeal stands disposed of accordingly.

DHARMESH SHARMA, J.

MAY 02, 2024/*Sadiq*