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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 11 January 2024**
Judgment pronounced on : 28 February 2024

+ MAC.APP. 2/2016

ORIENTAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Tarkeshwar Nath, Mr. Lalit
Mohan, Mr. Akash Kumar &
Mr. Harshit Singh, Advocates.
versus

ANIL KUMAR & ORS Respondents
Through: Mr. Manish Maini & Mr.
Dheeraj Jani, Advocate for R-1.

+ MAC.APP. 389/2016

ANIL KUMAR Appellant
Through: Mr. Manish Maini & Mr.
Dheeraj Jani, Advocates.
versus

ABHISHEK & ORS (ORIENTAL INSURANCE CO LTD)
..... Respondents
Through: Mr. Tarkeshwar Nath, Mr. Lalit
Mohan, Mr. Akash Kumar &
Mr. Harshit Singh, Advocates
for R-3.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This judgment shall decide the above-noted two cross-appeals which have been preferred by the parties assailing the impugned judgment-cum-award dated 31.10.2015 passed by the learned Presiding Officer Motor Accident Claims Tribunal, Karkardooma



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Courts (East), Delhi¹ in MAC No. 452/2010² on various grounds which would be enumerated hereinafter.

FACTUAL BACKGROUND:

2. The broad facts of this case are not in dispute. Shorn of unnecessary details, a claim petition was presented by the claimant Anil Kumar S/o Mr. Murari Lal, the appellant in MAC APP. 389/2016 and respondent No.1 in MAC APP.2/2016, which is preferred by the insurance company. It was the case of the claimant that on 15.06.2010, he was driving a scooter with his wife Smt. Vandana as the pillion rider, towards Yamuna Bazar Mandir, when at about 3.45 p.m. near the bus stand in East Azad Nagar, they were hit by a scooter bearing No. DL7SY-4628, which was being driven by respondent No.1/Mr. Abhishek S/o Sh. Ashok Kumar (MAC APP. 389/2016) who is respondent No.2 in MAC APP.2/2016, which was registered in the name of Mr. Amit Jain (respondent No.2 in MAC APP 389/2016 and respondent No.3 in MAC APP. 2/2016).

3. It was stated that as a result of being struck by the offending scooter, he fell down along with his wife and sustained grievous injuries whereas his wife survived with simple injuries. The offending scooter was admittedly insured for third party risk with Oriental Insurance Company. An FIR bearing No. 157/2010 under Section 379/338 of the Indian Penal Code, 1860 [“IPC”] was registered at Police Station, Krishna Nagar, Delhi against the driver. The respondents No. 1 and 2 (MAC APP. 389/2016) i.e., the driver and the

¹ MACT

² Unique Case I.D. No. : 02402C0232522010



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registered owner of the offending scooter both denied that accident had occurred with the offending scooter and denied that there was any rash or negligent act on behalf of the driver in causing the accident.

4. On the pleadings of the parties, the following issues were framed by the learned MACT on 03.05.2011:

- “i) Whether Petitioners suffered injuries in road side accident on 15.06.2010 involving vehicle bearing no. DL-7SY-4628 driven allegedly in a rash and negligent manner by R-1?
- ii) To what amount of compensation, if any, the Petitioner is entitled to and from whom?
- iii) Relief.”

5. It is pertinent to mention here that separate claim petitions were filed on behalf of the claimants, claimant Anil Kumar filed petition bearing MAC No. 453/2010, whereas his wife Smt. Vandana Mittal filed claim petition bearing MAC No. 452/2010. However, the two cases were clubbed together and the evidence was led by the parties conjointly, and eventually resulting in the impugned common judgment-cum-award dated 31.10.2015.

6. Insofar as the claim petition of the claimant Anil Kumar bearing MAC No. 453/2010 is concerned, issue No.1 was decided in favour of the claimant and against respondents No. 1 and 2 i.e., the driver and the registered owner. Issue No.2 was also decided in favour of the claimant and although medical certificate Ex.PW-4/A opined that claimant had suffered permanent disability to the extent of 56% in the ‘right lower limb’ and disability was assessed @ 20% and the learned MACT itemized the elements of compensation and awarded total compensation of Rs.6,52,655/- to the claimant with interest @ 12% per annum from the date of filing of petition till realization. The



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liability to pay the compensation was fastened on respondent No.3/insurance company with liberty to recover the amount of compensation from respondent No.1/driver and respondent No.2/registered owner.

7. The appellant insurance company in its appeal is assailing the impugned Judgment-cum-award and it was urged by the learned counsel for the insurance company that the income of the injured was wrongly assumed based on the Income Tax Returns³ [“**ITRs**”] for the assessment years 2007-08, 2008-09 and 2009-10 at an average of Rs. 1,54,996/- per annum whereas his earning patterns would show that the income was rather declining inasmuch as net income for the period 2009-10 was Rs. 1,02,121/-. Although, the claimant/injured was a shopkeeper, loss of wages was assessed for four months, for which there was no evidence led, and lastly, the interest on the compensation @ 12% per annum has been awarded on a higher side.

8. The appellant/injured in his appeal, assails the judgment-cum-award so as to seek enhancement of the amount of compensation, agitating that his permanent disability and loss of earning capacity have not been correctly assessed.

9. *Per contra*, learned counsel for the respondent No.1/claimant urged that the appeal is without any basis and the ITR of the claimant for the year 2009-10 clearly showed that the gross total income was Rs.1,96,000/- and there were certain deductions, which brought the net income down to Rs. 1,02,121/-, and thus, learned MACT rightly assessed the compensation. Reference was invited to decisions in

³ Ex.PW-3/2 (colly)



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Shashikala & Ors. v. Gangalashmamma & Anr.⁴ Lastly, it was submitted that the nature of injuries sustained by the claimant/injured were such that it has caused great hardships and he was not able to work for gains for about four months.

ANALYSIS AND DECISION:

10. I have given my thoughtful consideration to the submissions advanced by the learned counsel for the rival parties at the Bar. I have gone through the material placed on the record in the present appeals as also the digitized Trial Court Record.

11. As the main issue in the present appeals is about quantum of compensation, it would be apposite to reproduce the relevant heads/itemization and amount of compensation awarded by the learned Tribunal, which goes as under:

1.	Compensation towards Pain Shock & Suffering	Rs. 40,000.00
2.	Future Loss of Income	Rs.4,02,990.00
3.	Loss of Amenities & Enjoyment of Life	Rs. 40,000.00
4.	Towards servant/attendant charges	Rs.10,000.00
5.	Conveyance & special diet	Rs.14,000.00
6.	Compensation towards Medical Bills	Rs.94,000.00
7.	Compensation towards Loss of Wages	Rs.51,665.00
	Total=	Rs.6,52,655.00

12. First things first, PW-4 Dr. Binod Kalita, Senior Consultant (Orthopaedics) from Dr. Hedgewar Hospital, deposed about disability certificate reflecting 56% permanent disability of the petitioner in relation to his right lower limb which is Ex.PW-4/A. The injury is in

⁴ (2015) 9 SCC 150



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the nature of post anterior ligament reconstruction. In his cross-examination he categorically deposed that the disability is permanent in nature and cannot be reduced by physiotherapy. It is but apparent that the said disability has rendered the claimant incapable of bending his knees properly, walking, climbing up stairs, sitting in a cross-legged manner. Although, he has been working as a shopkeeper but his physical movements have been impaired and it is a lifelong ailment which would be very painful in his old age. Therefore, the assessment of functional disability at 20% is abysmally low and palpably appear to be unfair and unjust.

13. Learned MACT while making the assessment of the future loss of income considered that the claimant has testified that he was working as a shopkeeper and earning about Rs. 16,500/- per month. Learned Tribunal considered the ITRs for the assessment year 2007-08, 2008-09 and 2009-2010 showing gross income of the petitioners as Rs. 1,96,000/-, Rs. 1,66,858/- and Rs. 1,02,121/-, which are Ex.PW-3/2 (collectively) and assumed that average income for the three years was Rs. 1,54,996/- per annum which was reckoned for the purposes for assessment of future loss of income taking disability as 20% and applying multiplier of 13 for the claimant being 48 years of age.

14. At the outset, there is no merit in the plea by the learned counsel for the insurance company that the pattern of gross total income for the aforesaid three years would show that it was on decline. Learned counsel for the claimant has rightly urged that in the assessment for the financial year 2009-10, gross total income came to be Rs.



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1,96,000/- and infact tax of Rs. 653/- was paid for that assessment year as compared to Rs. 1950/- for the assessment year 2008-09 while it was 'Nil' for the year 2008-09. In the assessment year 2008-09, the gross total income was Rs. 1,66,854/- and after deductions under Chapter VI-A, net taxable income came to be Rs. 1,27,446/- whereas for the assessment year 2007-08, gross total income was Rs. 1,32,315/-, which after deductions under Chapter VI-A brought the net taxable income to Rs. 1,02,221/-. I find that although the learned Tribunal wrongly recorded the findings with regard to the income for the aforesaid years, net effect is the same and rather the evidence would show that income of the claimant was on ascendancy.

15. However, what the learned Tribunal has done is to assess the loss of future prospects at 20% which is contrary to the decision in the case of **National Insurance Company Ltd. v. Pranay Sethi**⁵ wherein it is clearly stipulated that where an injured is a self employed person and he is between 40 to 50 years of age, future loss of income should be reckoned @ 25%. Without further ado, this Court does not find any merit in the plea of the learned counsel for the appellant/insurance company that the compensation towards loss of wages for four months has been awarded without any basis. The claimant underwent painful surgical process, which required time to heal and in all probabilities, the claimant was unable to carry on any work for four months.

16. Accordingly, without interfering with the amount of compensation as awarded by the learned Tribunal with regard to other items, the loss of future income is worked as under:

⁵ (2017) 16 SC 680



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“25% future loss added to average annual income @ Rs. 1,54,996/- brings it to Rs. 1,93,754/-”

Applying the multiplier of 13 and assessing the future loss of income @ 25% towards the future loss of income on account of disability, it works out to Rs.6,29,671.25/-, which is rounded to Rs. 6,29,672/-. Accordingly, the total compensation is worked out as under:

1.	Compensation towards Pain Shock & Suffering	Rs. 40,000.00
2.	Future Loss of Income	Rs.6,29,672.00
3.	Loss of Amenities & Enjoyment of Life	Rs. 40,000.00
4.	Towards servant/attendant charges	Rs.10,000.00
5.	Conveyance & special diet	Rs.14,000.00
6.	Compensation towards Medical Bills	Rs.94,000.00
7.	Compensation towards Loss of Wages	Rs.51,665.00
	Total=	Rs.8,79,337.00

17. In view of the foregoing reasons, while the appeal bearing MAC.APP. 2/2016 preferred by the insurance company is hereby dismissed, the appeal bearing MAC. APP 389/16 preferred by the appellant/claimant is hereby allowed and the appellant/claimant is allowed total compensation of Rs. 8,79,337/- (Rupees Eight Lacs Seventy Nine Thousand Three Hundred and Thirty Seven only), which shall be payable to him with interest @ 12% from the date of filing of the petition till realization. The amount shall be payable by the appellant/insurance company with liberty to recover the same from respondent Nos. 2 and 3 i.e. the driver and owner of the offending



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vehicle, namely Abhishek S/o Sh. Ashok Kumar and Amit Jain S/o Sh. Mohan Lal Jain jointly and severally.

18. The aforesaid appeals are disposed of accordingly.

DHARMESH SHARMA, J.

FEBRUARY 28, 2024

Sadiq

Signature Not Verified

Digitally Signed By: PRANAY KUMAR VATS
Signing Date: 01.03.2024
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