2024:DHC:9955

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

Date of decision: 02nd December,2024

\+ MAC.APP. 419/2023 & CM APPL. 45751/2023 & CM APPL. 3862/2024

NATIONAL INSURANCE COMPANY .....Appellant

Through: Mr. Attin Shankar Rastogi, Mr. Adil Vasudeva, Ms. Anushka Raghunath and Ms. Tanusha Tyagi, Advocates.

versus

ZAHIDA KAUSAR & ORS. .....Respondents

Through: Mr. Somnath Parashar, Advocate for R-1.

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* has been filed by the *Insurance Company* against the Award dated 14.03.2023 whereby the compensation in the sum of Rs.20,55,226/- along with interest @ 9% per annum has been granted to the injured Respondent No.1, Zahida Kausar.

2. ***Briefly stated*** that on 19.02.2012 at about 9.30 pm the injured Zahida Kausar was walking on the roadside along with her husband and daughter, when the offending vehicle bearing Registration No. DL-1-ZZ-1181 which was being driven by Sarabjeet Singh Rana in a rash and negligent manner, hit her because of which she suffered injuries. FIR No. 23/2012 under Section 279/338 IPC P.S Chanakyapuri was registered.

3. The Claim Petition under Section 166 of the Motor Vehicles Act was filed in which the learned Tribunal awarded compensation in the sum of Rs.20,55,226/- along with interest @9% per annum.

4. The Insurance Company is aggrieved essentially on the aspect that the *Physical Permanent Disability was assessed as 10% in relation to her right lower limb which resulted in shortening of the leg*. However, the injured was a teacher and she continued to be in the same job and has not suffered any kind of loss in the salary on account of permanent disability. Functional disability of 10% has therefore, been wrongly assessed.

5. ***Cross Objections bearing No.3862/2024*** has been filed on behalf of Respondent No.1/injured, who has asserted that the compensation on account of *Non Pecuniary Heads* needs to be enhanced.

6. **Submissions Heard**.

7. PW-1, the injured in her Affidavit of Evidence, Ex. PW-1/A had produced the discharge slips and OPD Cards Ex. PW-1/2 collectively. As per the discharge summary, Ex. PW-1/2 the Petitioner was admitted in Dr. RML Hospital on 20.02.2012 and was discharged on 09.03.2012. She was diagnosed with NU Fx Tibia (gap with fixator in place) and had undergone operation.

8. As per Certificate dated 30.01.2019 Ex. PW1/10 (colly.), the petitioner was admitted in Amandeep Hospital, GT Road, Model Town, Amritsar on 13.11.2017 with diagnosis of O/C/O *non union pseudoarthrosis right tibia distal third with deformity* and had undergone surgery on 15.11.2017 for ORIF + BG + Fibula Osteotomy and was discharged on 23.11.2017. She suffered 3 cm of shortening of her right lower limb and her permanent disability as per Disability Certificate Ex. PW-2/A was assessed as 10%.

9. *PW-2, Dr. Vijay Kumar Jain* had proved the Disability Certificate and had deposed that the disability was permanent in nature. He further deposed

that she would have problem in climbing stairs, walking fast or running and she can only walk at normal and slow pace without support. He however, deposed that she would not have any difficulty in continuing her teaching job.

10. Taking into consideration the evidence of the Petitioner/injured as well as the Doctor, Tribunal concluded that the *Functional Disability of the injured is taken as 10%.*

11. The injured was working in J&K with Department of Education, Government of India. Her salary slip is Ex. PW-1/7. There is no evidence according to which she was getting a salary of Rs. 12,372/- per month. The Original Leave Certificate Ex. PW-1/6 reflects the leave that she had to take on account of the injuries; however, there is no diminution of her salary. It is also not disputed that she has continued in the same job on the same salary. Furthermore, PW-2, Dr. Vijay Kumar Jain had deposed that because of this permanent disability, she would not have any difficulty in her job.

12. In the circumstances, even though there is no diminution in salary, but it cannot be overlooked that there is shortening of Leg, because of which she would have problem in climbing stairs, walking fast or running and she can only walk at normal and slow pace without support, as deposed by PW-2 Dr. Vijay Kumar Jain which would definitely lead to some limitations in being able to discharge her job. Consequently, the learned Tribunal has rightly taken the functional disability as 10%. ***Thus, there is no ground for interference in assessing the Fluctuational Disability as 10% and the Appeal of Insurance Company has no merit.***

Cross Objections bearing No.3862/2024 by the Injured:

Enhancement of Compensation under Non Pecuniary Heads:

13. The injured, in Cross-Objections has asserted that the compensation under the *Non Pecuniary Heads* needs to be enhanced.

14. The Petitioner had complex injuries, as discussed above, which resulted in permanent disability.

15. The compensation under the non pecuniary heads is revised as under:-

a. Compensation for mental and physical shock which is *Rs.50,000/- is enhanced to Rs.1,00,000/-*;

b. Pain and suffering has been awarded in the sum of *Rs.50,000/- and is enhanced to Rs.1,00,000/-;*

c. Loss of Amenities of Life is given as Rs.40,000/- and is enhanced to Rs.75,000/-.

d. There is nothing granted on account of disfigurement but it cannot be overlooked that there is shortening of leg by 3 cm and thus, Rs.50,000/- is awarded towards disfiguration.

16. The compensation amount is accordingly revised as under:-

S. No.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
11.	**Pecuniary Loss:**		
(i)	Expenditure on treatment	Rs.4,18,719/-	Rs.4,18,719/-
(ii)	Expenditure on conveyance	Rs.3,83,673/-	Rs.3,83,673/-
(iii)	Expenditure on special diet	Rs.1,00,000/-	Rs.1,00,000/-
(iv)	Cost of nursing/attendant	Rs.5,86,000/-	Rs.5,86,000/-

(v)	Loss of earning capacity	NIL	**As Below**
(vi)	Loss of income	Rs.48,251/-	Rs.48,251/-
(vii)	Any other loss which may require any special treatment or aid to the injured for the rest of his life.	NIL	NIL
12.	**Non-Pecuniary Loss:**		
(i)	Compensation for mental and physical shock	Rs.50,000/-	**Rs.1,00,000/-**
(ii)	Pain and suffering	Rs.50,000/-	**Rs.1,00,000/-**
(iii)	Loss of amenities of life	Rs.40,000/-	**Rs.75,000/-**
(iv)	Disfiguration	NIL	**Rs.50,000/-**
(v)	Loss of marriage prospects	NIL	NIL
(vi)	Loss of earning, inconvenience, hardships, disappointment, frustration, mental stress, dejectment, and unhappiness in future life etc.	NIL	NIL
13.	**Disability resulting in loss of earning capacity:**		
(i)	Percentage of disability assessed and nature of disability as permanent or temporary	10%	10%
(ii)	Loss of amenities or loss of expectation of life span on account of liability	NI	**(As above)**
(iii)	Percentage of loss of	10%	**10%**

	earning capacity in relation to disability		
(iv)	Loss of future income- (income X percentage earning capacity X multiplier)	Rs.3,78,583/-	Rs.3,78,583/-
14.	**TOTAL COMPENSATION**	Rs.20,55,226/-	**Rs. 22,50,000/- (rounded off)**

Relief: -

17. The enhanced compensation amount of **Rs.22,50,000/-** along with interest @ 7.5% per annum, be deposited by the Insurance Company before the learned Claims Tribunal within four weeks, which may be disbursed in accordance with Award dated 14.03.2023.

18. The statutory amount deposited, be refunded to the Insurance Company.

19. Accordingly, the Appeal along with pending Application(s), if any, is hereby disposed of in the aforesaid terms.

NEENA BANSAL KRISHNA, J

DECEMBER 2, 2024/rk