$~14 & 15

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

% ***Date of decision: 20th November, 2024***

\+ **MAC.APP. 882/2018 & CM APPL. 40697/2018**

UNITED INDIA INSURANCE CO. LTD.
REGIONAL OFFICE NO. 1 (LEGAL DEPTT)
KANCHANJUNGA BUILDING,
8™ FLOOR, 18,BARIKHAMBAROAD,
NEW DELHI-110001 .....Appellant

Through: Mr. Sankar N. Sinha, Advocate.

versus

1. MASTER MOHD. SAHIL
S/0 SH.MUSHRRAF
R/O 137, JHUGGI E-43A,
D-BLOCK, 70, FOOTA ROAD,
NEW SEEMAPURI, DELHI. .....Respondent No.1.

2. SH. MANJINDER SINGH
S/0. SH. BALDEV SINGH,
K-2, MOHAN GARDEN,
UTTAM NAGAR
NEW DELHI. .....Respondent No.2.

3. CHIEF GENERAL MANAGER,
DELHI TRANSPORT CORPORATION
CW-I,DTC DEPOT,
B.B. MARG, IP ESTATE, DELHI .....Respondent No.3.

Through: Mr. S.N.Parashar, Advocate for R-1.

\+ **MAC.APP. 367/2022**

MASTER MOHD. SAHIL

S/0 SH.MUSHRRAF
R/O 137, JHUGGI E-43A,
D-BLOCK, 70, FOOTA ROAD,
NEW SEEMAPURI, DELHI. .....Appellant

Through: Mr. S.N.Parashar, Advocate.

versus

1. UNITED INDIA INS. CO LTD
C/o. C-1, Main Road, Kanti Nagar
Near Bullet Showroom
New Delhi. .....Respondent No.1.

2. SH. MANJINDER SINGH
S/0. SH. BALDEV SINGH,
K-2, MOHAN GARDEN,
UTTAM NAGAR
NEW DELHI. .....Respondent No.2.

3. Delhi Transport Corporation
New Delhi. .....Respondent No.3.

Through: Mr. Sankar N. Sinha, Advocate for R-1.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T*(oral)*

1. The aforesaid two Appeals Appeal under *Section 173* of the *Motor Vehicle Act, 1988* shall be decided by this common Order as they arise from the Award dated 26.04.2018 *vide* which the injured/ Mohd. Sahil has been granted compensation of Rs. 8,10,000/- along with interest at 9% p.a. from 20.08.2015 till realisation.

2. ***MAC.APP. 882/2018*** has been filed on behalf of the Insurance Company for reduction/modification of the impugned compensation

amount, while ***MAC.APP. 367/2022*** has been filed by the injured/ Mohd. Sahil to seek enhancement of Compensation.

3. ***Briefly stated,*** on 16.02.2015 at 2:30 p.m. the Claimant/Injured-Master Mohd. Sahil *(12 years old)* along with his friend Rafiq, was going from his house towards Old Seema Puri on his bicycle, when a DTC bus bearing No. DL-1-PC-9300 *(the offending vehicle)*, being driven by Respondent No.1-Manjinder Singh in a rash and negligent manner, came from behind and hit his bicycle.

4. The injured child was taken to the GTB Hospital by PCR where his MLC was prepared. After initial treatment the injured was taken to the AIIMS Trauma Centre, where he was operated and diagnosed with permanent disability.

5. The *FIR No. 271/2015* under *Section 279/338 of the Indian Penal Code, 1860* was registered at Police Station Seema Puri against the driver of the offending vehicle.

6. After investigations, Detailed Accident Report was filed by the Investigating Officer before the Motor Accidents Claims Tribunal (MACT). Subsequently, the Claim Petition was filed under Section 166 of the Motor Vehicles Act, 1988.

7. The Learned Tribunal disposed of the Claim Petition with an award of a sum of Rs.8,10,000/- in favour of the Claimant/injured along with interest @ 9% p.a. from the date of filing of the DAR.

8. *The Appellant/Insurance Company has challenged the Award on the following grounds: -*

(i) that the learned Tribunal wrongly assessed the notional income of the injured, even though the law in this regard stands settled in the case of *Master Mallikarjun vs. National Insurance Co. Ltd.,* (2014) 14 SCC 396;

(ii) that the learned Tribunal has awarded compensation contrary to the decision of the Supreme Court *vide* which the total compensation to be awarded is Rs. 5,00,000/- on all heads, if the disability is up to 90%, and in the present case it is 83%;

(iii) that the learned Tribunal erred in awarding Rs. 1,50,000/- for pain & suffering, once compensation as per statutory formula has been awarded;

(iv) that the learned Tribunal erred in awarding Rs. 75,000/- under the head of disfiguration when no medical evidence has been led in this regard by the injured; and

(v) that the learned Tribunal has given an interest rate on the higher side when the Supreme Court in *Arun Kumar Agarwal vs. National Insurance Co. Ltd.,* 2010 (9) SCC 218**,** has awarded a rate of 6% p.a.

9. *The Injured/Mohd. Sahil has filed cross-objection seeking enhancement of Compensation, on the following grounds: -*

(i) that the learned Tribunal wrongly computed the Future Loss of Income on account of Permanent Disability, as per judgment of this court in *Chetan Malhotra vs. Lala Ram,* MAC No. 554/2010, which is applicable for death cases only; whereas the present case is one of injury, where the injured is now 17 years old and completely financially dependent on his parents;

(ii) that the learned Tribunal has wrongly assessed Functional

Disability as 45% when permanent physical disability is 83%; for computing future loss of income, without considering the disability of the injured and its effect on his working;

(iii) that the compensation granted towards Non-Pecuniary Heads including Loss of Amenities in life, Mental and Physical Loss, Disfigurement, Marriage Prospects, is on lower side; and

(iv) that the compensation awarded towards Attendant charges, and Special Diet & Conveyance is also on the lower side.

10. It is further argued that the Appeal filed by the Insurance Company, is devoid of any legal substance.

11. **Submissions heard and record perused.**

Loss of Income/Earning Capacity:-

Assessment of Notional Income and Functional Disability:-

12. The Appellants have asserted that the learned Tribunal has erred by placing reliance on *Chetan Malhotra vs. Lala Ram*, MAC. APP.No.554/2010, decided on 13.05.2016, to calculate the loss of income when it should have been in accordance with the law settled in *Master Mallikarjun* (supra).

13. In this regard, it is pertinent to refer to the Disability Certificate of the injured child dated 01.07.2015 Ex.PW-1/5, which states thathe has a *permanent disability of* ***83% with respect to his right lower limb.*** As per his medical documents, his right leg (below the knee) has been amputated. The injured is a young 12 year old child and has his whole life to lead.The learned Tribunal has thus, assessed his *functional disability at the rate of*

45% by considering his age at the time of accident and future prospects, ***which is well justified.***

14. The moot question however, is what should be the basis for calculation of compensation.

15. In the case of *Kajal vs. Jagdish Chand and Ors.,*(2020)4 SCC 413 wherein the 12-year-old injured girl suffered from mental disability where her IQ got reduced to less than 20% and the Medical Board assessed her social age to be only of a 9-months' old child. The Hon'ble Supreme Court held as under:-

> *"6. It is impossible to equate human suffering and personal deprivation with money. However, this is what the Act enjoins upon the courts to do. ....**The compensation or damages assessed for personal injuries should be substantial to compensate the injured for the deprivation suffered by the injured throughout his/her life. They should not be just token damages.***
>
> *...*
>
> *27. One factor which must be kept in mind while assessing the compensation in a case like the present one is that the claim can be awarded only once. The claimant cannot come back to court for enhancement of award at a later stage praying that something extra has been spent. **Therefore, the courts or the Tribunals assessing the compensation in a case of 100% disability, especially where there is mental disability also, should take a liberal view of the matter when awarding the compensation.** While awarding this amount, we are not only taking the physical disability but also the mental disability and various other factors. ......Therefore, we feel in the peculiar facts and circumstances of the case even after taking a very conservative view of the matter an amount payable for the pain and suffering of this child should be at least Rs 15,00,000."*

16. Relying upon the case of <u>*Kajal*</u> (supra), the same principle was applied in the case of <u>*Master Ayush vs. Branch Manager, Reliance General Insurance Co. Ltd. &Anr.,*</u> (2022) 7 SCC 738, wherein the SupremeCourt awarded compensation on the *Minimum Wages criteria*, towards loss of incomein the case of a 5 year old victim, who was left in a paraplegic state due to the road accident suffered in 2010.

17. The Apex Court in <u>*Baby Sakshi Greola vs. Manzoor Ahmad Simon*</u>, 2024 SCC OnLine SC 3692 wherein the injured had a Permanent Disability of 75% and was also suffering from moderate mental retardation,relied on <u>*Kajal*</u> (supra) and <u>*Master Ayush*</u> (supra) and held that taking notional income is not the correct approach. ***Instead, the Minimum Wages payable to a Skilled Workman in the State concerned has to be taken into consideration because that would be the minimum amount which she would have earned on becoming a major.***

18. The decision in <u>*Chetan Malhotra*</u> (supra), in which the Compensation was assessed by following the Cost Inflation Index formula on which the learned Tribunal has placed reliance has been distinguished and not followed in various judgments.

19. The Delhi High Court in <u>*National Insurance Co. Ltd. vs. Master Shaurya& Ors.*</u>, (Decided on 01.08.2023) clarified that cases like <u>*Rajendra Singh and Others vs. National Insurance Company Limited*</u>, (2020) 7 SCC 256, which took Rs. 36,000 as notional income, did not establish any fixed principle, emphasizing that income determination must remain flexible based on facts of each case.

20. Notional Income, by its very nature, is an abstract and hypothetical concept that attempts to estimate what a person might have earned in the future. Minimum wage is a criteria that guarantees a dignified and a uniform standard for compensation calculation.

21. *Thus, the quantum of compensation needs to be assessed on the basis of* ***Minimum Wages for a Skilled Worker in Delhi in 2015, which is Rs.10,478 p.m.***

Future Prospect and Multiplier:-

22. In this regard, it is pertinent to refer to the case of *Master Ayush* (supra),wherein it was held as under:

> *"9.* ***In addition to the skilled minimum wages, the appellant would be also entitled to 40% for future prospects in view of the judgment of this Court in National Insurance Company Limited v. Pranay Sethi & Ors; (2017) 16 SCC 680.***
> *10. Thus, the compensation works out to be Rs.3700/- plus 40%, which amounts to Rs.5180/- per month.* ***The multiplier of 18 would be applicable in view of the age of the appellant****….."*

23. Thus, as per the principles laid down in the case of*National Insurance Company Limited vs. Pranay Sethi and Others,* (2017) 16 SCC 680 and *Master Ayush* (supra), **future prospects at the rate of 40% has to be added to the income**along with the **appropriate multiplier of '18'.**

24. Thus, the *Loss of future earnings due to the Permanent Disability for life, is calculated as under:*

i. Rs.10,478/- p.m. + 40% *(Future Prospects)* **= Rs. 14,669.2 /- p.m.;**

ii. Rs. 14,669.2 x 12 x 18 X 45/100 *(functional disability)***= Rs.14,25,846.24/-.**

25. *Thus, the loss of income for the injured child is assessed at Rs.* ***Rs.14,25,846.24 /-.***

<u>Non-Pecuniary Heads:-</u>

<u>Pain and Suffering:-</u>

26. The learned Tribunal has granted a sum of Rs.1,50,000/- for pain and suffering. Considering the nature of injuries and the permanent disability suffered by the injured who isof young age due to the accident, the amount awarded does not warrant any interference.

<u>Conveyance and Special Diet:-</u>

27. The learned Tribunal has granted a sum of Rs.25,000/- for conveyance and special diet for the injured child. The amount granted towards Conveyance and Special Dietis reasonable considering the injuries suffered by the child and the same does not merit any interference.

<u>Attendant Charges:-</u>

28. As per the Permanent Disability Certificate dated 01.07.2015, Ex.PW-1/5, PW-1/Shabana, mother of the injured has deposed that her son/Mohd. Sahil has sustained grievous injury and multiple fracture on right leg.

29. The learned Tribunal has considered that the injured child must have been assisted by some family member during his period of treatment and thus, granted a sum of Rs.15,000/- for Attendant charges for 3 months.

30. In the case of ***Kajal*** (supra) it was held that the multiplier system should be followed not only for determining the compensation on account of loss of income but also for determining the attendant charges, etc.

31. Though no evidence has been led about the actual engagement of an attendant, it cannot be overlooked that the parent or some family member would have to work additionally to take care of the child. The Minimum Wages of a Skilled Worker in Delhi in 2015 is Rs.10,478/- p.m., therefore in the facts of the present case, **45% of Rs.10,478/- p.m. i.e. Rs. 4,715.1/- p.m. may be taken as Attendant charges,** to calculate the amount for additional work undertaken by the family members to take care of the child**.** Furthermore, considering that the compensation on account of the charges for an attendant is being paid to be utilised in future, the multiplicand for the Attendant Charges is calculated at 50% of Rs. 4,715.1/- p.m. It is calculated as under:-

Rs. 4,715.1/- x 12 x 18 x 50% = Rs. 5,09,230.8/-.

Disfigurement:-

32. The Appellant/Insurance Company has contended that the learned Tribunal haswrongly awarded Rs. 75,000/- under the head of disfiguration, when no medical evidence has been led in this regard by the injured.

33. Even though no evidence has been adduced in this regard, it is a fact that he suffered permanent disability in his right lower limb in the road accident. As per his medical documents, his right leg (below the knee) has been amputated. The injured is a young 12 year old child and has his whole life in front of him. But his physical fitness and bodily appearance have

changed due to the accident. Thus, the amount of Rs.75,000/- granted by the learned Tribunal towards disfigurement cannot be considered excessive.

Mental and physical shock,Loss of Study, Loss of amenities in life:-

34. The learned Tribunal has granted Rs.50,000/- for mental and physical shock, Rs.25,000/- and Rs.50,000/- for Loss of Study and Loss of amenities in life respectively. *The same does not warrant any interference.*

Loss of Marriage Prospects:-

35. The Claimant/Respondent in his Cross-Objection to the Appeal has contended that no amount has been awarded for the loss of marriage prospects to the injured.

36. In the case of *Kajal*(supra), the Apex Court granted a sum of Rs.3,00,000/- for compensation under the Loss of Marriage Prospects to a child with 100% permanent disability. Similarly, in the case of *Master Ayush,*(supra), the Court observed that the injured child has not only lost his childhood but also adult life. Therefore, loss of marriage prospects at the rate of Rs.3,00,000/- was awarded.

37. In this regard, *the Apex Court in Baby Sakshi Greola* (supra) held as under:-

> *" ... Marriage/companionship is an integral part of the natural life of a human being……*
> ***43. We are, therefore, of the opinion that this a fit case where the compensation award awarded under the head of loss marriage prospects by the High Court is inadequate and the same must be enhanced to Rs. 5,00,000/-."***

38. *The learned Tribunal has erred in not granting any compensation for the loss of marriage prospects. Thus, Rs. 3,00,000/- is granted to the injured under this head.*

Rate of Interest:-

39. The Appellant/Insurance Company has contended that the interest @ 9% as granted by the learned Tribunal is on the higher side.

40. In the case of *National Insurance Co. Ltd. vs. Yad Ram*, 2023 SCC OnLine Del 1849, this Court has opined that the rate of interest awarded on compensation payable should be decided on a case-to-case basis, rather than having a fixed measure of the same, as what may be reasonable in one case may not be so in another.

41. In the present case, the accident occurred on 16.02.2015 and the Award was passed on 26.04.2018. The rate of interest awarded by the learned Tribunal is reasonable and does not warrant any interference.

Conclusion:-

42. In view of the discussion above the compensation is thus re-calculated as under:-

S. No.	**Heads**	**Compensation granted by the Tribunal**	**Compensation granted/enhanced by this Court**
(i)	Expenditure on treatment/Reimbursement of medical expenses	Rs.1,090/-	Rs.1,090/- (same)
(ii)	Pain and Suffering	Rs.1,50,000/-	Rs.1,50,000/- (same)

(iii)	Attendant Charges	Rs.15,000/- (for 3 months)	**Rs. 5,09,230.8/-**
(iv)	Loss of earning capacity including future due to this disability	Rs. 4,17,650/- [Reliance placed on *Chetan Malhotra* (supra)]	**Rs.14,25,846.24/-**
(v)	Conveyance and Special Diet	Rs.25,000/-	Rs.25,000/-each (same)
(vi)	Disfiguration	Rs.75,000/-	Rs.75,000/- (same)
(vii)	Compensation for mental and physical shock	Rs.50,000/-	Rs.50,000/- (same)
(viii)	Loss of Study	Rs.25,000/-	Rs.25,000/- (same)
(ix)	Loss of amenities in life	Rs.50,000/-	Rs.50,000/- (same)
(x)	Loss of Marriage Prospects	NIL	**Rs.3,00,000/-**
TOTAL COMPENSATION		Rs.8,10,000/-	Rs.26,11,167.04 **(rounded off to Rs.26,12,000/-)**

Relief: -

43. Thus, the total compensation granted to the Claimants is re-calculated as ***Rs. 26,12,000/- along with interest @ 9% per annum*** from the date of the Claim till the date of deposit, in terms of the Impugned Award dated 26.04.2018 of the learned Tribunal.

44. The enhanced amount be deposited within three months. The statutory deposit be returned to the Insurance Company in accordance with law.

45. The Appeals stand disposed of along with the pending Application(s), if any.

NEENA BANSAL KRISHNA, J

NOVEMBER 20, 2024