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

+ MAC.APP. 173/2015 & CM APPL. 2983/2015

NATIONAL INSURANCE CO LTD

.....Appellant

Through: Mr. S. L. Gupta, Mr. Asutosh Sharma
and Ms. Gunjan Sharma, Advocates.

versus

AMITABH GIRI & ORS

.....Respondents

Through: Mr. Abhinav Bhardwaj, Advocate.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

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21.08.2024

1. The instant appeal has been filed on behalf of the appellant insurance company against the impugned award dated 19th January, 2024 passed by the learned Presiding Officer, MACT, Saket, New Delhi in MAC Petition No. 151/2013, seeking setting aside/modification of the same.
2. Learned counsel appearing on behalf of the appellant submitted that vide the impugned award, the learned Tribunal decided the claim petition in favour of the respondent no.1/claimant before the learned Tribunal and awarded a compensation of Rs. 10,45,000/- to the respondent no.1 with interest @9% per annum.
3. It is submitted that the impugned award has been passed against the settled position of law and while awarding the compensation, the learned Tribunal failed to take into consideration the documents and evidence available on its record as well as the submissions made by the insurance company before it.
4. It is submitted that the learned Tribunal has awarded a compensation of Rs. 5,00,000/- under the head of loss of future prospects as the



respondent no.1 was a player of basketball and the same is on a higher side. It is further submitted that whilst awarding the said compensation amount, the learned Tribunal erred in not appreciating that if the respondent no.1 was shortlisted in Sub Junior Delhi Basketball Team, there is no evidence on record to prove that he was selected and that he could not participate because of the injuries sustained by him due to the accident.

5. It is submitted that the learned Tribunal has awarded a compensation of Rs. 1,00,000/- for loss of studies without considering the statement of PW1/respondent no.1, given in cross examination by the insurance company, wherein, he specifically mentioned that he has not suffered “*any academic loss on account of injuries*”. It is also submitted that the aforesaid fact has been duly recorded by the learned Tribunal in paragraph no. 6 of the impugned award and despite the same, the learned Tribunal has awarded Rs. 1,00,000/- under the said head.

6. It is further submitted that since the respondent no.1 has himself stated in his cross examination that no loss has been occurred due to the accident, awarding Rs. 1,00,000/- to him is erroneous and in contravention of the law.

7. It is submitted that the respondent no.1 has suffered the permanent disability only to the extent of 8% in his left lower limb and the learned Tribunal has awarded Rs. 3,00,000/- on account of loss of amenities and marriage prospects. It is submitted that the same is contrary to the established law and also on the higher side as the adequate compensation of Rs. 75,000/- has already been awarded under the head of pain and suffering and enjoyment of life.

8. It is submitted that the learned Tribunal also erred in awarding penal



interest @12% per annum for the period of delay if the awarded amount is not deposited within a period of 30 days from the date of passing of the impugned award. It is also submitted that the aforesaid penal interest which is to be counted after 30 days is contrary to the provisions of Section 173 of Motor Vehicles Act, 1988 as the provision itself provide 90 days period for submitting the amount or depositing the compensation award.

9. Therefore, in view of the foregoing submissions, it is prayed that the appeal may be allowed and the reliefs be granted.

10. *Per contra*, learned counsel appearing on behalf of the respondent no. 1/claimant vehemently opposed all the submissions made by the learned counsel appearing on behalf of the appellant submitting to the effect that the compensation amount awarded vide the impugned award under each head is already less and the respondent no. 1/claimant has filed a separate appeal for enhancing the same.

11. It is also submitted that the respondent no.1 had filed a certificate showing that he was shortlisted in Sub Junior Delhi State Basketball Team as well as several other certificates showing that he was a basketball player and an athlete running in 400 and 800 meters race.

12. It is submitted that upon bare perusal of the aforesaid certificates, it is crystal clear that the respondent no.1 had a good future as a basketball player and athlete. It is further submitted that in view of the said facts, the arguments of the learned counsel appearing on behalf of the appellant that no there is no evidence on record to show that the respondent no. 1 was a good basketball player and an athlete is legally untenable, and thus, the awarding of the compensation of Rs. 5,00,000/- is inadequate and liable to be enhanced.



13. It is further submitted that the argument made by the learned counsel appearing on behalf of the appellant that the compensation of Rs. 3,00,000/- under the head of the permanent disability is on a higher side is without any substantive evidence and therefore, there is no force in the said argument.

14. It is submitted that loss of 8% permanent disability of the person who is an athlete and a Basketball player has ruined his entire career, therefore, there are no force in the argument that Rs. 3,00,000/- compensation on the head of the permanent disability is inadequate and enhanced for looking for the future prospect of the person who is admittedly a Basketball player and an athlete.

15. It is submitted that due to the accident, the injury sustained by the respondent no.1 certainly calls for enhanced compensation under the head of loss of future studies as Rs. 1,00,000/- is a meager amount. Furthermore, even the compensation of Rs. 75,000/- awarded under the head of pain and suffering is also inadequate and there is no force in the argument of the appellant thereto.

16. It is submitted that the appellant has failed to make out any case for setting aside of the impugned award or for modification of the award in regard the compensation amount. Therefore, in view of the foregoing submissions, it is prayed that the instant appeal may be dismissed.

17. Heard both the parties and perused the material available on record.

18. By way of the present appeal, the appellant insurance company has contended that the learned Tribunal has awarded the compensation under the head of 'loss of future prospects on account of permanent disability', 'loss of future studies', 'pain and suffering', 'loss of marriage prospects' etc. on a higher side although the material available on its record show



otherwise. It has been contended that even though the respondent no.1 was shortlisted in Sub Junior Delhi Basketball Team, there is no evidence on record to prove that he was selected and that he could not participate because of the injuries sustained by him due to the accident.

19. Moreover, the respondent no.1 had deposed in his cross examination that he has not suffered any academic loss due to the accident, and the learned Tribunal, without considering the said deposition, proceeded to award compensation under the head of 'loss of studies'. Therefore, on account of several irregularities as well as illegalities in the impugned award, the same is liable to be set aside/modified.

20. As per the Lower Court's Record, it is observed by this Court that while awarding compensation under the head of 'loss of future prospects due to permanent disability', the learned Tribunal took into account the fact that the respondent no.1 herein had keen interest in sports activities and that he was an athlete and a basketball player. Further, he was selected to participate in the State Basketball Team, however, due to the accident in question, he suffered fracture in left leg.

21. Pursuant to same, the respondent no.1 was examined by the Disability Board of Pt. Madam Mohan Malviya Hospital which had issue a disability certificate (Ex. PW2/A) as per which, it is evident that the respondent no. 1 has suffered 8% permanent disability in relation to his left lower limb. It is pertinent to mention here that PW-2, i.e., Dr. Iqtedar Ali had deposed that due to the aforesaid permanent disability, the respondent no.1 is having difficulty in continuing with his game.

22. It is a settled position of law that the Motor Vehicles Act, 1988 is a beneficial and welfare legislation which has been enacted with the intention



to provide relief to the victims and victim families which are affected due to motor vehicle accidents, by the way of “just and fair compensation”. The aim of this welfare legislation is to alleviate the emotional as well as the financial distress of the victims and the victim families. This beneficial legislation is a remedial act and must be construed in furtherance with the purpose with which it has been framed. Hence, the said Act should receive a liberal construction so as to promote its objectives.

23. Therefore, in light of the facts of the matter in hand, this Court is of the considered view that the factors discussed in the foregoing paragraphs are integral for the determination of the compensation to which the respondent no.1 is entitled to, and the same have been duly taken into account by the learned Tribunal while passing the impugned award. The appellant’s contention that the respondent no.1 has failed to bring on record any material evidence as to how the disability has affected his future prospects as well as marriage prospects is baseless and legally untenable.

24. The respondent no.1, who was a young student during the time of the incident in question, suffered permanent disability of 8% in his left lower limb due to the rash and negligent driving by the driver of the offending vehicle. Further, a perusal of PW-1/12 shows that the respondent no.1 was selected to participate in Sub Junior Delhi State Basketball Team.

25. Additionally, the respondent no.1 herein had also filed various merit and sport certificate awarded to him. The said evidence proves that the respondent no.1 might have achieved laurels provided he did not suffer any disability. Moreover, there is no shred of doubt that a student suffers some kind of loss in studies due to such accident which has caused certain permanent disability, and the loss does not necessarily has to be in terms of



failure in some examination, but the same cannot be quantified in particular terms. Such loss of studies can be measured in terms of gaining low marks, missing classes and other curricular as well as co-curricular activities.

26. It is also noted that it will not be just to say that the disability suffered by the respondent no.1 is a minor one and it will not have any major impact in his life as the same will be against the interest of justice and the legislative intent behind the enactment of the Motor Vehicles Act, 1988. Thus, this Court is not inclined to allow such contention of the appellant and the same is rejected and it is held that no reduction is required under the head of loss of studies, loss of future prospects on account of disability as well as loss of marriage prospects.

27. Therefore, taking into consideration the observations made in the foregoing paragraphs, it is held that the learned Tribunal passed the impugned award after taking into consideration all the evidence available on its record as well as the cross examination, and passed a detailed and reasoned order in accordance with the law. This Court does not find any illegality in the reasoning ascertained by the learned Tribunal *qua* the determination of the compensation and the compensation so decided does not warrant any reduction.

28. In view of the above facts and circumstances, the impugned award dated 19th January, 2024 passed by the learned Presiding Officer, MACT, Saket, New Delhi in MAC Petition No. 151/2013 is upheld.

29. Accordingly, the instant appeal stands dismissed along with the pending applications, if any.

CHANDRA DHARI SINGH, J

AUGUST 21, 2024/rk/ryp/av *Click here to check corrigendum, if any*