* IN THE HIGH COURT OF DELHI AT NEW DELHI

% **Judgment reserved on : 01 March 2024**
Judgment pronounced on : 01 July 2024

\+ MAC.APP. 403/2018

YASIN MALIK ..... Appellant
Through: Mr. O.N. Sharma and Mr. Diyush Jhakar, Advs.

versus

LOK PAL SINGH & ORS (M/S SBI GENERAL INSURANCE CO LTD) ..... Respondents
Through: Ms. Sameer Nandwani, Adv. for R-3/M/s. SBI General Insurance Co. Ltd.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

JUDGMENT

1. The appellant/claimant-injured has preferred this appeal in terms of Section 173 of the Motor Vehicles Act, 1988[1] assailing that the quantum of compensation is on the lower side, as awarded by the learned Presiding Officer, Motor Accident Claims Tribunal, Rohini Court, Delhi[2] *vide* judgment-cum-award dated 22.08.2017

FACTUAL BACKGROUND

2. Shorn of unnecessary details, the appellant/claimant-injured, who was about 37 years of age and a self employed person dealing in vegetables and fruits, met with an accident on 08.02.2016 when his motorcycle was hit by the vehicle bearing registration No. DH-61-C-

[1]MV Act
[2] Tribunal

5906[3] driven by respondent No.1 in a rash and negligent manner as a result of which the appellant/claimant-injured sustained grievous injuries, necessitating a prolonged treatment and he eventually filed the claim petition under Section 166 read with Section 140 of the MV Act.

3. Respondent No.1 as well as respondent No.2, the registered owner of the offending vehicle did not contest the claim petition. The respondent No.3 i.e., the insurer company, however, contested the claim petition taking all the relevant statutory grounds but it is an admitted fact that the offending vehicle was insured for third party risks.

4. Suffice to state that the findings given by the learned Tribunal holding respondent No.1, Lok Pal Singh, the driver of the offending vehicle to be responsible for causing accident and resultant injuries upon the appellant/claimant-injured are not under challenge in this appeal. As regards quantum of compensation, the amount of compensation awarded by the learned Tribunal is tabulated as under:

(i)	Medical Expenses	Rs. 1,55,167/-
(ii)	Special diets	Rs. 20,000/-
(iii)	Conveyance	Rs. 15,000/-
(iv)	Loss of future earnings	Rs. 11,98,147.50
(v)	Attendant Charges	Rs. 50,000/-
(vi)	Pain & suffering	Rs. 50,000/-
(vii)	Loss of enjoyment of life	Rs. 50,000/-
	Total	**Rs. 15,38,314.50**

(rounded up as Rs. 15,39,000/-)

5. Learned counsel for the appellant/claimant-injured has urged that the appellant/claimant-injured suffered permanent disability to the

[3] Offending vehicle

extent of 44% but the learned Tribunal has wrongly reckoned the permanent disability *vis-a-vis* the whole body @ 22%. It was urged that since appellant/claimant-injured was self employed, the functional disability should have been reckoned @ 60%, for which reliance is placed on the decisions in **Raj Kumar v. Ajay Kumar**[4] and **Sandeep Khanuja v Atul Dande**[5]. It was further pointed out that the learned Tribunal did not make any provision for increase in future prospects of the income of the appellant/claimant-injured, which is in contravention of the parameters laid down in the case of **National Insurance Company Ltd. v. Pranay Sethi**[6]**.**

6. Lastly, it was urged that the compensation under non-pecuniary heads *viz.,* towards pain and suffering, loss of amenities of life and disfigurement are on the lower side and it is prayed that the compensation under each of such head be increased to Rs. two lacs.

7. *Per contra,* learned counsel of for the respondent No.3 i.e. appellant/insurance company urged that the learned Tribunal has rightly reckoned the functional disability @ 22% *vis-a-vis* the whole body considering that the nature of the permanent disability or locomotor disability is not such that would render into any substantial hindrance to the appellant/claimant-injured in discharging his normal day-to-day bodily functions.

<u>ANALYSIS AND DECSION:</u>

8. Having given my thoughtful consideration to the submissions advanced by the learned counsels for the parties and having gone

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[4] (2011) 1 SCC 343
[5] (2017) 3 SCC 351

through the relevant record of the case including the digitized Trial Court Record, this Courts finds that the compensation awarded to the appellant deserves to be enhanced.

9. First things first, insofar as the reimbursement of medical expenses, special diet and conveyance besides attendant charges are concerned, no enhancement is required. As a matter of fact, compensation on account of reimbursement of attendant charges has been awarded on just and equitable grounds by the learned Tribunal though there was no substantial evidence to that effect. However, learned counsel for the appellant/claimant-injured has rightly pointed out that while considering loss of earning capacity or functional disability, learned Tribunal has not given the benefit of increase in the income/earning of the appellant/claimant-injured in future, which, as per the decision in the case of the ***Pranay Sethi (supra)*** should be reckoned @ 40%.

10. Further, although the learned Tribunal rightly considered that the appellant/claimant-injured was an income tax payee and his annual income was Rs. 3,63,075/-, it failed to consider the aspect of future prospects in the increase of earnings of the appellant-claimant, and thus, this Court takes into account 40% increase which comes to Rs. 1,45,230/- and thus, the annual notional income would come to Rs. 5,08,305/-, to which the multiplier of '15' has rightly been applied by the learned Tribunal.

11. Insofar as reckoning of permanent disability is concerned, the disability certificate dated 05.11.2016 issued by the Medical Board of

[6] (2017) 16 SCC 380

the Dr. Baba Saheb Ambedkar Hospital, Delhi shows that the appellant-claimant has suffered post traumatic stiffing of left hand which is opined to be 44% permanent physical impairment or locomotor disability. There are no remarks as to whether the injury is progressive or non-progressive and whether or not it is likely to improve or not. Unfortunately, the appellant/claimant-injured in his affidavit in evidence Ex.PW-1/A has not deposed as to how and in what manner the locomotor disability shall impact his working in his occupation or self-employment. He has not even cared to examine any medical practitioner or any member of the Board that had issued the disability certificate Ex.PW-1/91. Therefore, the approach of the learned Tribunal in assessing the physical disability *vis-a-vis* the whole body to the extent of 22% cannot be faulted. Accordingly, the compensation towards loss of earning or functional disability comes to (Rs,5,08,305 x 15x 22/100) i.e. Rs. 16,77,406.50 Paisa which is rounded up to Rs. 16,77,407/-.

12. Lastly, having regard to the prolonged medical treatment and for the fact that the appellant/claimant-injured was not able to normally discharge his day to day bodily functions for a long time, the compensation towards pain and suffering and loss of enjoyment of life is increased from Rs. 50,000/- to Rs. 1,00,000/-. Accordingly, the total compensation is worked out as under:

(i)	Medical Expenses	Rs. 1,55,167/-
(ii)	Special diets	Rs. 20,000/-
(iii)	Conveyance	Rs. 15,000/-
(iv)	Loss of future earnings	Rs. 16,77,407/- [{3,63,075+40%)x15x22%)]
(v)	Attendant Charges	Rs. 50,000/-

(vi)	Pain & suffering	Rs. 1,00,000/-
(vii)	Loss of enjoyment of life	Rs. 1,00,000/-
	Total	**Rs. 21,17,574/-**

13. Accordingly, the appellant/claimant-injured is entitled to a total compensation of Rs. 20,67,574/-. As regards the interest, it is pertinent to mention that the claim petition was filed on 30.03.2016 and the impugned judgment-cum-award came to be passed within a period of one and a half year and during the relevant time the interest rates were ordinarily pegged @ 7.5% per annum and this Court in umpteen numbers of cases has held that the rate of interest should ordinarily be 7.5% per annum unless and until there are shown justifiable grounds to award interest at a higher rate. Accordingly, the appellant/claimant-injured shall be entitled to claim interest @ 7.5% per annum from the date of filing of the DAR[7] i.e. 30.03.2016 till realization.

14. The compensation as enhanced by this Court with accrued interest shall be paid to the appellant/claimant-injured within four weeks from today, making adjustments of any amount of compensation already paid with interest, if any, failing which the respondent insurer shall be liable to pay the penal interest @ 12 % p.a from the date of this judgment till realisation.

15. The appeal is accordingly allowed and disposed of in terms of the decision hereinabove.

DHARMESH SHARMA, J.

JULY 01, 2024

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[7] Detailed Accident Report