



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

% **Judgment reserved on : 15 May 2024**
Judgment pronounced on : 02 July 2024

+ MAC.APP. 449/2017

THE ORIENTAL INSURANCE CO LTD Appellant
Through: Mr. A K Soni, Advocate.

versus

D K JAIN & ORS Respondents
Through: Mr. Shekhar Aggarwal,
Advocate for R-1.

+ MAC.APP. 172/2018

D K JAIN Appellant
Through: Mr. Shekhar Aggarwal,
Advocate.

versus

THE ORIENTAL INSURANCE COMPANY LTD & ORS
..... Respondents
Through: Mr. A K Soni, Advocate.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This common judgment shall decide the cross-appeals instituted by the appellant/parties herein under Section 173 of the Motor Vehicles Act, 1988¹ challenging the impugned judgment-cum-award dated 06.03.2017 passed by the learned Motor Accident Claims Tribunal, Shahdara, Karkardooma Courts, Delhi² in MACP No.

¹ MV Act

² Tribunal/ MACT



87/2012³ titled as '*D.K. Jain. Vs. Nadeem & Ors.*' to the extent of quantum of compensation awarded by the Learned Tribunal.

FACTUAL BACKGROUND:

2. Briefly stated, Mr. D.K. Jain/claimant, aged 62 years at the time of accident, filed a claim petition for compensation before the Ld. MACT after sustaining severe injuries in a motor accident dated 19.08.2011 between 12.30 PM and 1.30 PM at Kankar Khera, Meerut, Uttar Pradesh, when one truck bearing No. HR-38K-1878 (hereinafter "the offending vehicle") being driven rashly and negligently by one Mr. Nadeem (hereinafter "driver of the offending vehicle") hit a car bearing No. DL-7CK-7689 that was being driven by the claimant.

3. The appellant claimant D.K. Jain instituted a claim petition under section 166 read with section 140 of the Motor Vehicles Act, 1988, claiming that the accident caused a depression in the head (skull) of the claimant due to which he had to undergo severe surgical treatment including bone fixation by a titanium skull. However, the surgery could not repair the temporal depression. Thereafter, he was on RIT feed for a long time and had also developed respiratory distress due to which he was kept on ventilator support from 20.08.2011 till 27.08.2011. On 07.09.2011, he recovered from the state of unconsciousness and was shifted to Bhagya Shree Hospital where he remained admitted from 12.09.2011 till 21.09.2011 and again from 23.09.2011 till 06.11.2011. It is stated that the claimant has also undergone Kerala Ayurvedic Therapy and is still under treatment that requires regular medical check-ups. It is further stated that he is

³ Claim Petition



rendered mentally inactive, suffers from memory loss, walks abnormally, and has lost four front teeth, as well as, much of his eyesight due to the injuries sustained in the accident.

4. Notice of the claim petition was served upon the driver Nadeem and the registered owner of the offending vehicle, namely Jitender, who did not file any written statement and were accordingly proceeded *ex-parte* by the Id. Tribunal. The Insurance Company of the offending vehicle filed its written statement and although it admitted that the offending vehicle was duly insured with it at the time of the accident, it took the preliminary objection that considering the fact that the claimant is mentally inactive and suffering from memory loss, the claim petition ought to have been filed through next friend or guardian of the claimant. On merits, the Insurance Company denied the allegations of the claimant and contended that the claimant was guilty of contributory negligence in the motor accident dated 19.08.2011.

5. Based on the pleadings, the following issues were framed by the learned Tribunal on 28.02.2014:

1. *Whether the petitioner suffered injuries in the accident occurred on 19.08.2011 due to rash and negligent driving of vehicle no. HR-38K-1878 (truck) being driven by the Respondent No. 1? OPP*
2. *Whether the petitioner is entitled for any compensation, if so, to what amount and from whom? OPP*
3. *Relief.*

6. With regard to Issue No.1, relying upon the material placed on the record, testimonies of the claimant's witnesses, and in the absence of any evidence led by the driver or owner of the offending vehicle



calling for an adverse inference, the Id. Tribunal decided the said issue in favour of the claimant, which is not under challenge in these appeals.

7. As regards the Issue No.2, the Id. Tribunal computed the total compensation amount payable to the claimant tabulated hereinbelow:

S. No.	Head	Amount
1.	Compensation towards pain and suffering	Rs.1,25,000/-
2.	Compensation towards medical bills	Rs. 14,65,337/-
3.	Compensation on account of purchase of thermo magnetic bed	Rs. 1,19,000/-
4.	Loss of earning capacity due to disability	Rs. 29,81,849/- (Rs. 5,13,227 x 7 x 0.83)
5.	Attendant charges for 20 months	Rs. 84,000/-
6.	Special diet and conveyance	Rs. 50,000/-
7.	Compensation towards, loss of amenities and enjoyment of life	Rs. 1,25,000/-
8.	Compensation towards disfigurement	Rs. 1,25,000/-
9.	Compensation on account of future expenditure for attendant	Rs. 50,000/-
	Total Compensation	Rs. 51,11,186/-

8. Thus, the learned Tribunal held that the claimant is entitled to a total compensation Rs. 51,11,186/- along with interest @ 10% per annum from the date of filing of the claim petition i.e. 31.05.2012 till realisation. Since the offending vehicle was admittedly insured with the Oriental Insurance Co., the Id. Tribunal fixed the liability upon the Insurance Company to deposit the award amount along with interest within 30 days from the date of passing of the impugned judgment cum award i.e. 06.03.2017 and notify the claimant about the same.



GROUND OF APPEAL: BY THE INSURER IN MAC. APP. 449/2017

9. The impugned judgment cum award has been assailed by the insurance company on the following grounds: -

- a) That the Id. Tribunal erred in concluding that the permanent disability suffered by the claimant is 83% on the basis of the disability certificate without the petitioner having proved such disability certificate by examining the issuing authority. It is alleged that in view of the facts and circumstances of the present case, the disability suffered by the claimant could not have been more than 40%.
- b) That the Ld. Tribunal grossly erred when it awarded Rs. 29,81,849/- to the claimant towards 'loss of earning capacity due to disability' without considering that there is no material evidence on record to suggest any loss of earning to the claimant.
- c) That the Id. Tribunal erred when it awarded Rs. 1,19,000/- towards purchase of thermo-magnetic bed as there is no medical prescription brought on record by the claimant suggesting requirement of the same.
- d) That the Id. Tribunal acted arbitrarily while awarding exorbitant amounts of compensation towards 'disfigurement', 'pain and suffering', 'attendant charges @ Rs. 3,500/- per month for 20 months', 'conveyance and special diet', 'loss of amenities and enjoyment of life' and 'future expenditure for attendant'.
- e) That the Id. Tribunal erred when it awarded a higher rate of interest @ 10% per annum.
- f)

GROUND OF APPEAL: BY THE APPELLANT/ CLAIMANT IN MAC. APP. 172/2018

10. The impugned judgment cum award has been assailed by the claimant on the following grounds: -

- a) That the learned Tribunal erred in assessing the annual income of the claimant @ 5,13,227/- on the basis of



cumulative income of the claimant as reflected in the Income Tax Returns for three assessment years i.e. 2009-10, 2010-11, 2011-12. It is contended that the Ld. Tribunal ought to have taken the annual income of the claimant as Rs. 8,55,270/- per annum as per the Income Tax Return of the claimant for the assessment year 2011-12. That the Ld. Tribunal also erred in concluding that the permanent disability suffered by the claimant is 83% as it should have been 100%. Accordingly, the award under “Loss of Earning Capacity due to Disability” should be enhanced to Rs. 59,86,890 (8,55,270 x 7 x 1.0).

b) That the learned. Tribunal erred when it awarded “meagre amount” to the claimant towards ‘pain and suffering’, ‘loss of amenities and enjoyment of life’, ‘special diet and conveyance’, ‘future expenditure for attendant’ in view of the present physical and mental condition of the claimant. It is contended that he is entitled to an enhanced amount of compensation under such heads.

c) That the learned Tribunal erred in not awarding any amount to the claimant towards ‘shortening of life’ or ‘future expenditure on medical treatment’ in view of the poor medical condition of the claimant.

d) That the learned Tribunal erred in not awarding the cost of the claim petition in favour of the claimant.

ANALYSIS AND DECISION:

11. I have given my thoughtful consideration to the submissions advanced by learned counsels for the rival parties at the Bar. I have also perused the relevant records of the case including the digitized Trial Court record.

12. It would be apposite to refer to the observations made by the learned Tribunal in assessing compensation to the claimant/injured, which read as under:

“19. I have perused the entire evidence on record and heard Ld. Counsel for the parties. Treatment record Ex.PW-2/4 and 2/8 show



that injured was initially removed to Anand hospital after accident Where he was diagnosed with head injuries with right temporal depressed communitated fracture with SDH with chest infection. The hospital adopted the course i.e right temporal deb. Craniectomiemy with dorsal with bone fixation by titanium skull plate C3. The treatment record Ex.PW 2/8 and 10 show that on 12.09.2011 he has been admitted to Bhagya Shree hospital wherein he was diagnosed with head injuries pneuon fix with septicemia and discharged on 21.09.2011. On 23.09.2011 he was again admitted to Bhagya Shree hospital and remained admitted till 06.11.2011. Ex.PW2/7 and 2/9 shows that he has visited the private doctor and IHBAS. The follow up treatment has continued. To my mind, he has undergone enormous pain and sufferings during the course of his treatment. He has remained admitted to the hospital. He is entitled for Rs. 1,25,000/- on account of pain and sufferings.

20. The medical bills Ex.PW2/5/A to H-1, 2/X to 2/Z are filed by the petitioner to show that he has incurred an expenditure on his treatment. Ld. Counsel for the insurance company has admitted the medical bills to the tune of Rs. 14,65,337/- and calculation to this effect is placed by him. Ld. Counsel for petitioner has fairly admitted that a sum of admitted amount of Rs.14,65,337/- be granted as compensation towards the expenditure on treatment. In view of these facts the petitioner is entitled for the said amount on account of medical expenses.

21. The petitioner has purchased a thermo magnetic bed for a sum of Rs.1.19 lakh. PW1 has corroborated the version of petitioner. A bill Ex.PW1/1 of Rs. 1,19,000/- was issued by PW-1 regarding the purchase thermo magnetic bed by petitioner. The said bed was required keeping in view the nature of injuries sustained by the petitioner. Hence, petitioner is entitled for the compensation on account of purchase of thermo magnetic bed.

22. The petitioner has suffered permanent disability in the accident. PW-2 stated that he has suffered 83.3% permanent disability. The disability certificate is Ex.PW2/13. The certificate shows that-petitioner has sustained severe head injuries and there is moderate hemiparesis on the left side of the head. He has suffered locomotor disability and neurological disability amounting to 83.3 %. The injured was more than 60 years at the time of accident. The disability has effected his mental faculty. The petitioner will not be able to the work which he used to do prior to the accident. His movements are confined. He is dependent upon others. The petitioner has appeared in the court in the wheel chair. The disability has totally changed his life. The disability has definitely affected his working ability to do any work. In these circumstances, his functional disability of the entire body is taken as 83%.



23. PW-2 stated that he was running a business of maintenance of mobile tower site, machinery repair and maintenance along with real estate business. He has filed income tax returns. PW-3 has proved ITRs EX.PW3/1 for the assessment years 2009-10 to 2013-14. The date of accident is 19.08.2011. The petitioner has also filed income tax return, for the financial year 2011-12 with assessment year 2012-13. The business was going on. In view of this fact, a cumulative income for the three assessment years i.e. 2009-10 to 2011-12 is taken as income of the petitioner. The gross income for assessment year 2009-10 after deduction income tax comes to Rs, 2,71,319, for the assessment year 2010-11 comes to Rs. 4,84,438 and for the assessment year 2011-12 comes to Rs. 7,83,924/-. the average income for the last three years comes to Rs.5,13,227/-. The loss of future income due to disability is calculated by multiplying the annual income of the petitioner with the percentage of disability and multiplier. The date of birth of the petitioner is recorded as 13.07.1949 in Pan Card EX.PW2/12. The accident has taken place on 19.08.2011. He was 62 years old at the time of accident. The multiplier of 7 is applicable. Support is drawn from **“Sarla Verma vs DTC”, 2009 ACJ 1298**. The loss of future earning on account of disability comes to Rs. 29,81,848.87/- (Rs. 5,13,227 x 7 x 0.83). The petitioner is entitled for a sum of Rs. 29,81,849/- (rounded off) on account of loss of income due to permanent disability.

24. His business was in operation even during his treatment because he has also filed income tax return for the financial year 2011-12 with assessment year 2012-13. There was no loss of income so petitioner is not entitled for compensation on account of loss of income during the period of treatment. 25. The petitioner has sustained permanent disability so he was unable to do his daily chores. He has not examined any person to show that he has kept an attendant. Some family members must have attended to him during this period. The nature of injuries show that he must have been attended by his family members for at least for 20 months; The petitioner is entitled for compensation for the attendant charges @Rs. 3500/- per month for a period of 20 months.

26. PW-1 stated that he has purchased a car and kept a driver cum attendant because he could not afford a taxi for going to hospital time and again. He has filed the bills Ex.PW2/3 to show that he has paid a handsome amount to drivers Brijesh, Sagar, Sandeep, etc. The petitioner has not examined any person to prove these bills so these bills cannot be relied upon. 27. The petitioner has visited the hospital number of times for treatment. There is no bill that he has spent a particular amount on special diet. The nature of the injuries show that he must have taken special diet in order to heal the



wound. He is entitled for compensation towards special diet and conveyance which are assessed to Rs. 50,000/-.

28. There is permanent disability. There is loss of amenities and enjoyment of life so petitioner is entitled for compensation of Rs. 1,25,000/-.

29. There is disfigurement of right upper limb. He has suffered permanent disability of 83.3%. Hence, the petitioner is entitled for compensation towards disfigurement of Rs. 1,25,000/-.

30. The petitioner has Sustained 83.3 % disability. He needs an attendant even in future. He is entitled for a compensation of Rs.50,000/- on account of future expenditure for attendant.”

13. On conspectus of the entire record and the aforesaid reasons by the learned Tribunal, firstly coming to the issue of compensation for pecuniary loss under the head “loss of earning/functional disability”, the injured/claimant was 62 years of age at the time of accident and although he claimed and deposed in his affidavit in evidence Ex.PW1/A that he was a businessman, having an annual income of more than Rs.12 lacs, the same has not been substantiated. PW3/Ms. Yogita, Inspector from the Income Tax Office produced the summoned record with regard to Income Tax Returns filed by the claimant/injured and the returns shown in the record bring about the following position:

Assessment Year	Gross Income	Net Income
2009-2010	2,85,250/-	--
2010-11 (filed on 30.09.2011)	5,32,704/-	4,64,300/-
2011-12	9,15,321/-	9,11,900/-
Revised ITR for 2011-12 (filed on 04.02.2012)	9,55,270/-	8,55,270/-
2012-13	5,92,157/-	5,56,800/-
2013-14	3,81,007/-	2,66,070/-



14. It is pertinent to mention here that the Income Tax Returns for the year 2010-11 had been filed after the accident in question. It is also pertinent to mention that it is in the testimony PW-2/claimant/injured that he has no sons but three married daughters.

15. In view of the aforesaid evidence on record, the learned Tribunal have committed no illegality or perversity in holding that the average income for the last three years i.e. 2009-10 to 2011-12 could be assessed at Rs.5,13,227/-. As evidently the claimant/injured was 62 years of age at the time of accident, the multiplier of '7' has been correctly applied and he is not entitled to any provision towards prospects of future increase in earnings, in terms of the decision in the matter of **National Insurance Company Limited v. Pranay Sethi**⁴ by the Supreme Court.

16. Another aspect that needs to be addressed while assessing "loss of income or functionally disability" is that although PW-2 has testified that he has suffered functional disability to the extent of 83%, the permanent disability certificate dated 10.12.2014 purportedly issued by the Medical Superintendent, Guru Teg Bahadur Hospital, Ex.PW2/13 has not been proven in accordance with law. No member of the Board has been examined as to how and in what manner the claimant/injured is a case of multiple disabilities. A careful perusal of the certificate Ex.PW2/13 would show that many columns have been left blank viz., with regard to whether re-assessment of disability is necessary or not and in fact with regard to the severe head injury, there is a remark as to "left side moderate hemiparesis", which is

⁴ (2017) 16 SCC 680



opined to be 50%, while as against columns for “the low vision and blindness”, the disability has been opined to be 75%. The disability with regard to head injury is stated to be 0% and I am afraid there appears to be no basis of conclusively holding that disability to the extent of 83.3% has been suffered.

17. That being the case, the learned Tribunal has erroneously held that the disability to be 83% vis-a-vis the whole body. In this regard, at this juncture, it may also be pointed out that PW-2 claimant/injured in his affidavit in evidence has claimed that he has sustained serious head injuries in the nature of right temporal depressed comminuted fracture of SDH, injuries on forehead, fracture of ribs and seven teeth were broken. It is further deposed that he is usually mentally inactive, suffering from memory loss, walking abnormalities. But then PW2 claimant/injured has not led any cogent and reliable evidence to show as to how and in what manner he suffered loss of earning capacity or diminished functional capacity. In the absence of expert medical testimony, so as to prove the nature and extent of his disability suffered, it is difficult to discern that all the ailments which have been attributed by the claimant/injured have arisen due to accident.

18. In the said view of the matter, it would be appropriate that the permanent disability vis-a-vis whole body should be assessed to 40%, and accordingly, the compensation towards loss of earning capacity/functional disability is assessed to Rs.14,37,036/- ($5,13,227 \times 7 \times 40\% / 100$). All said and done, the injuries suffered in the accident are such that are likely to aggravate the ailments of the claimant/injured who was 62 years of age. It needs to be appreciated



that suffering life threatening injuries bodily injuries particularly at such age triggers off several complications which will remain till the end of life. While no interference is required insofar as the compensation which has been given towards the reimbursement of the medical expenses, in view of the medical bills proven on the record, compensation on account of purchase of thermo magnetic bed also cannot be faulted on any grounds since testimony of PW-1 about the medical benefits of such bed was not tested in his cross-examination.

19. At the same time, the learned Tribunal has taken a myopic view of awarding the compensation for attendant charges for 20 months only, overlooking the fact that the claimant/injured remained bed-ridden for almost three years, and therefore, taking the notional wages of Rs.3,500/- per month that might have been paid to an attendant for about 36 months, the compensation towards attendant charges is enhanced to Rs.1,26,000/-. The compensation towards special diet and conveyance, which is a meagre sum of Rs.50,000/- is increased to Rs.1.50 lacs. Compensation towards pain and suffering, keeping in mind that the injured was 62 years, is enhanced to Rs.2 lacs. Likewise, the compensation towards loss of enjoyment of amenities of life is enhanced to Rs.2 lacs from Rs.1.25 lacs. But there is led no evidence to suggest any disfigurement of the body.

20. Accordingly the compensation payable to the claimant/injured is computed and tabulated as under:

1.	Pain and suffering	Rs.2,00,000/-
2.	Medical bill	Rs.14,60,337/-
3.	Purchase on account of purchase of	Rs.1,19,000/-



	thermal magnetic bed	
4.	Loss of earning capacity/functional disability	Rs. 14,37,036/-
5.	Attendant charges	Rs.1,26,000/-
6.	Special diet and conveyance	Rs.1,50,000/-
7.	Loss of enjoyment of amenities of life	Rs.2,00,000/-
	Total	Rs.36,92,373/-

21. Before parting with this case, although learned counsel for the Insurance Company has urged that the award of compensation in the nature of interest @ 10% is exorbitant, however, having regard to the fact that claim for compensation was filed on 31.05.2012 and it took about five years in the final adjudication of the matter during which time no fair and reasonable compensation was offered by the appellant/Insurance Company despite being bound by third party clause of the insurance policy subscribed by the registered owner of the offending vehicle, this Court is not inclined to interfere with the grant of compensation towards rate of interest @ 10% per annum from the date of filing of the petition till realisation.

22. In view of the foregoing decision, the appeal filed by the appellants/varying parties are partly allowed and the claimant/injured is awarded total compensation of Rs 36,92,373/- with interest @ 10 % from the date of filing of the petition till realisation. It is clarified that in terms of interim order dated 26.05.2017, 70% of the amount of award that was initially granted by the learned Tribunal vide judgment-cum-award dated 06.03.2017 have been released to the claimant/injured. The balance amount on further assessment and



computation in terms of decision of this Court, be released to the claimant/injured with interest within four weeks from today failing which the insurance company shall be liable to pay penal interest @ 12% per annum from the date of decision till realisation. The appeals are disposed of accordingly.

23. The amount of Rs. 25,000/- towards statutory deposited be released to the appellant/insurance company in MAC.APP. 449/2017

24. All pending applications are disposed of.

DHARMESH SHARMA, J.

JULY 02, 2024

VLD