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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 11.04.2023

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MAC.APP. 870/2011 & CM APPL. 8909/2020

JYOTI SINGH

..... Appellant

versus

NAND KISHORE & ORS

..... Respondents

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MAC.APP. 768/2011

ICICI LOMBARD GENERAL INSURANCE CO LTD

..... Appellant

versus

JYOTI SINGH & ORS

..... Respondents

Through: Mr. Saurabh Kansal, Ms. Ashu Chaudhary, Mr. Divyam Aggarwal and Mr. Arjun Goswami, Advocates for Claimant-Jyoti Singh.

Mr. A.K. Soni, Mr. Pavan Kumar, Advocates for ICICI Lombard.

Mr. Tarun Johri and Mr. Vishwajeet Tyagi, Advocates for DMRC.

Mr. Tushar Sannu, ASC for NDMC with Mr. Devrat Tiwari and Mr. Azad Bansal, Advocates.

Mr. Balendu Shekhar, CGSC with Mr. Raj Kumar, Advocate for Ministry of Railways.

Mr. Nikhil Sharma and Mr. Aditya Gupta, Advocates for BRPL and

BYPL.

Mr. Gautam Narayan, ASC GNCTD
with Mr. Harshit Goel, Advocate.

Mr. Manish Kumar Srivastava and Mr.
Sagar Arora, Advocates for TPDDL.

Mr. Rikky Gupta, SC for DTC with
Ms. Ananya Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (ORAL)

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. The appellant was a 14 year old adolescent, enjoying all the fun of a school-going girl of her age, till the fateful afternoon of 1st December, 2007 when returning from school, she met with a debilitating motor-vehicular accident. She has been rendered wheelchair bound for the rest of her life. The Motor Accidents Claims Tribunal ('MACT') has awarded her a compensation of Rs.47,49,610/-. She has impugned it (MAC.APP. 870/2011) on various grounds. The insurer too has impugned the award (MAC.APP. 768/2011) contending that the awarded amount was on the higher side.
2. She contends that she has suffered 100% disability, therefore, the compensation should be enhanced. She relies upon the dicta of Supreme Court in *Kajal vs. Jagdish Chand and Ors.* (2020) 4 SCC 413, which, while dealing with a similar case of a 12 year old school going girl having suffered 100% disability, awarded enhanced compensation.

3. Dr. B. Kanhar, Senior Orthopedic Surgeon, Aruna Asaf Ali Government Hospital, Delhi (PW-5), who had been her attending doctor has deposed that Jyoti has suffered 100% permanent disability in relation to her spine and both her lower limbs and the condition is not likely to improve. The impugned award has discussed his evidence as under:

“ ...

PW-5 Dr. B. Kanhar, Senior Orthopedic Surgeon, Aruna Asaf Ali Government Hospital, Delhi has proved the permanent disability certificate of Jyoti Singh as Ex.PW 1/6. He stated that as per the disability certificate patient had suffered 100% permanent disability in relation to spine and both lower limbs and the condition is not likely to be improved.

On being cross-examined by Sh. Shashi Shankar, counsel for respondents no. 1 & 2 he stated that he can state on the basis of his experience that such persons do not show any improvement as far as such disability is concerned.

On being cross-examined by Ms. Suman Bagga, counsel for respondent no.3 he stated that he had examined the patient for the purpose of issuance of disability certificate and had issued disability certificate on the basis of guide lines issued by Government of India. He has proved the guide lines as Ex.PW5/DA. He stated that he cannot comment that advanced technology or treatment can improve the condition of patient. He stated that no Neuro Surgeon had assessed the disability of petitioner in the present case.

...”

4. To similar conclusion has been the deposition of PW-6- Dr.

Mathew Varghese, Head of Department of Orthopedic Surgery, St. Stephen's Hospital, Delhi, who too has opined that the appellant suffers from serious medical conditions, which are not likely to improve throughout her life. The impugned award deals with his evidence as under:

“14. He stated that the petitioner had suffered fracture of spine with paraplegia with bladder bowel involvement. She had saddle anaesthesia in the sitting and perineal area. Her muscle power in the lower limbs was found to be zero for the foot and ankle, zero for the knee, zero for internal and external rotation of the hip. She was maintained on urinary bladder drainage using an intermittent catheter insertion by an attendant. Over the period of evaluation till May,2009 she has not shown any significant improvement in her muscle power and she continues to be wheel chair bound and continuous to need catheterization for her bladder functioning. She is also on regular suppositories for her bowel functions. She needs regular exercise, regular urine evaluation for culture and evaluation of kidney function to exclude any renal failure. The patient has not shown any improvement in her bladder functions and function of the lower limb. He further stated that in future she is affected for sexual function and needs regular monitoring by physiotherapists for maintenance of existing muscle function. The recurring expenses per annum with cost per session may be up to Rs.400/- or more depending upon where it is done. She would require regular evaluation by Orthopedic specialists/Urologist for her bladder bowel and spinal stability. At present there is no medical facility which can improve her paralysis,

however, new technologies for bladder function are coming which are implantable device but very expensive and not done routinely in our country. The cost of implant is about Rs.8 lacs but nobody is doing it routinely in India. If a surgeon comes from abroad, it would be very expensive but he cannot say what would it cost. He stated that besides that there will be recurring cost because of the battery life of this implants is limited. He stated that bowl function of the patient is a socially embarrassing condition which needs the patient to have special diet/high fibre diet, diapers and bowel monitoring to ensure that she remains continent (prevent leakage of bowel from the rectum) which she will need for whole of her life. She is confined to a wheel chair and being in our environment which is not completely barrier free, she will need special wheel chairs/transportation aids/special vehicle which may cost lacs of rupees and help of attendant to continue life beyond her parents family support. She will be on wheel chair for her whole life or till new technologies come which is still in its an infancy state. He stated that nobody knows how much these will be effective in. He has proved the medical history of patient as Ex.PW5/A. His own opinion was proved as Ex. PW1/7.

On being cross-examined by Ms. Suman Bagga, Ld.Counsel for Respondent no.3, Insurance Company she stated urinary bladder management in paraplegic comes under the orthopaedic domain, however, secondary complications of urinary tract infection and renal failure comes under the domain of nephrologist and urologist. New technology of bladder management for paralytic bladder using implantable devices are done by urologist. He

stated that nobody in India is doing this. He stated that none of his patients have undergone implantable device treatment for urinary bladder as nobody could afford it. He stated that the patient is completely confined to wheel chair as her pelvic muscles are paralyzed. She can study and intellectually she is fine. He stated that the patient is coming to the hospital for follow up treatment and has been advised physiotherapeutic exercises. He stated that he has no idea as to what is the life of the bladder implants which costs Rupees 8 lacs to 10 lacs. He stated that the purpose of bladder implants is to provide an electrical stimulus for bladder emptying without the need for a catheter. It has a huge advantage as it is a replacement for catheter and the catheter induces infection. She is already recurring infections. He does not anticipate any further improvement in any muscles power of the paralyzed limbs. He also stated that there is no likelihood of any improvement in the condition of patient in future.

5. Mr. Saurabh Kansal, the learned counsel for the claimant, submits that insofar as the claimant's disability and debilitation in movement is absolute and permanent, i.e. she will be lifelong wheelchair-bound, unable to move on her own without the assistance of an attendant, even for small needs like going to the washroom, she suffers from 100% disability qua spine and both lower limbs. Her functional disability too is 100%. She has lost movement of her body below the stomach including loss of control over bladder and bowel movements. She is and will be completely dependent on attendants throughout her life.

6. The award of compensation has been impugned on the ground that many pecuniary heads have not been duly considered by the learned Tribunal and the claims under those heads have been declined without any sustainable justification.

7. The two medical opinions clearly establish that the appellant-Jyoti suffers from 100% functional disability. Her medical condition is even more aggravated because she has virtually no control of her bladder and bowel movements. She will require regular suppositories for bowel movements, regular exercise, regular urine evaluation for culture and evaluation of kidney function to exclude any renal failure. Since she is debilitated below the stomach, she would need diapers all the time and bowel monitoring, to ensure that she remains continent i.e. there is no leakage of bowel from the rectum. This alertness and care would need to be maintained for all her life. According to the doctors her peculiar medical condition necessitates a special diet/ high fibre diet. These are all additional expenses related to her lifelong medical condition. Such condition is not associated with the daily life of an ordinary person. Since these are special expenses, they need to be provided for a lifetime of hardship. She would suffer social and personal embarrassment because of her uncontrolled bowel movement. In these circumstances, a just and fair compensation is to be awarded so that she is put in a position as close as to what she could have been without the injury. Accordingly, compensation is computed as under:

i) Reimbursement apropos lifetime sanitary expenses: For a person suffering from incontinence and not in control of urinary or bowel

movement, there would be need for diapers, pads, sanitary sheets, regular changing of bed-sheets, wet wipes, tissue-papers, medical gloves, etc. For this expense, Rs.5,000/- per month has been assessed by the MACT. The annual expense for the same would be Rs.60,000/-. Although the impugned award has factored this annual expense but has provided for the same through interest on FDRs. This is unfair to the injured because compensation needs to be provided on a legitimate ground. In the present case this is a necessary expense because of her medical condition, it would therefore be categorised as a lifetime medical expense. Also, the impugned award has assumed that the FDR rates would always be not less than 8%. The earnings from FDRs are from monies which has already been awarded to her over which the insurer cannot have any right, claim or say. The awardee has absolute right over utilisation of the same. The interest earned cannot be adjusted to set-off the liability of the person who is to pay compensation. This will be a life-time expense. Therefore, applying a multiplier of 18 for the appellant, the compensation towards 'medical and sanitary expenses' of Rs.10,80,000/- is awarded.

ii) Expenses towards attendants: From Jyoti's condition, as discussed above it is apparent that she would require the assistance of an attendant round the clock. Insofar as the learned Tribunal has opined that the appellant would require an attendant for the rest of her life, a corollary compensation amount would have to be awarded for the same. Two attendants in 12 hours shifts would need to be provided for. Ordinarily, this element of the compensation should be a dynamic one and linked with the rate of inflation. The Rs.30,000/- per annum

awarded by the MACT might have been sufficient when the order was first passed in 2011 but in the present no attendant would be available for Rs.30,000/- per annum for a daily 12 hour shift. The said amount is not meaningful. It was always open to the insurance company to provide a government qualified nursing attendant to the appellant or pay monies for such attendant round the clock. In *Kajal (supra)* the expenses towards two attendants was computed on the basis of minimum wages of a skilled person in Haryana in the year 2010 i.e. the year of the MACT award and not in the year 2007, when Kajal suffered the injury. In the present case the expenses have to be linked to the minimum wage of a skilled person in Delhi in 2010 i.e. the time/ year of the award. The notified minimum wage in 2010 was Rs.6,448/-. Therefore, expenses towards attendant charges will be Rs. 6448/- (minimum wages) x 12 (months) x 18 (multiplier) x 2 (attendants) = Rs. 27,85,536/-. The same is awarded to Jyoti.

iii) Expenses towards 'physiotherapy': the doctors have advised and verified that the claimant will require physiotherapy throughout her life so that her bowel and bladder movement are functional to the extent possible, failing which she may be reduced to a mere vegetative existence. Her having engaged and expended monies towards physiotherapy, has been proved through a bill for Rs.11,500/- for 23 sessions in a month (Exhibit P-1/G). These are invoices of physiotherapy for the months from April 2017 to November 2017. The number of days for physiotherapy in a month varies from 21 to 24. The average is taken at 23 days and the amount of Rs. 11,500/- is taken as the average amount expended by the claimant on

physiotherapy in a month. The annual amount would come to Rs.1,38,000/-. Applying the multiplier of 18 because of her age at the time of the accident, an amount of Rs.24,84,000/- towards physiotherapy is awarded to her.

iv) Wheelchair: To facilitate her movement to the extent possible, during the course of the hearing, the appellant was provided by the insurance company a wheel chair of her choice. The court, on 12.09.2019 had directed that the same shall be kept in good repair and any need for change or replacement or upgradation of the wheel-chair shall be ensured by the insurance company promptly.

v) Loss of marriage prospects: In *Kajal (Supra)*, for loss of marriage prospects, an amount of Rs.3,00,000/- was awarded to the 12 year old school going girl. Jyoti was 14 year old at the time of accident. Her position is almost identical to Kajal. Therefore, she too is entitled to and is awarded Rs.3,00,000/- towards 'loss of marriage prospects'.

vi) Loss of expectation of life/ loss of amenities of life' and 'pain and suffering': *Kajal (Supra)* has awarded an amount of Rs. 15,00,000/- under this conjoint head. The same is awarded to Jyoti as well.

vii) The learned counsel for the claimant submits that with the advancement of medical technology, movement of persons who are otherwise debilitated below the waist is possible in some cases, with the assistance of orthopaedic assistive contraptions, one of which is KAFO- a Bilateral Knee Ankle Foot Orthosis, a medical device to facilitate her to stand up. It is available in India and the appellant has

purchased it in the hope that by way of this medical device- KAFO, she might be able to at least stand if not walk sometime in the future. It has been bought for Rs.99,750/- from Ottobock-a company which deals with orthopaedic equipments. The bill of its purchase (Exhibit P-1/E) stands proven. The objective and rationale of compensation has to be rehabilitative also. The expense for the rehabilitative device is awarded to her. It has to be ensured that it is in good working condition for the rest of her life. The said fitment shall, therefore, have a lifetime warranty. If something better is available, the same may be replaced. The insurer shall ensure that the said orthopaedic facilitation is kept in good repair and for this the same procedure as directed apropos maintenance of the wheelchair, shall be followed.

viii) Expenses towards special diet: In the appellant's case, a special diet has been necessitated on account of her extended debilitation and for her to keep herself in fair health, she would need high protein supplements for the rest of her life as opined by Dr. Mathew Varghese. The MACT has awarded her only Rs.36,200/-. Since she would need this special diet for the rest of her life, therefore, by using the multiplier of 18, the compensation for special diet is increased to Rs.6,51,600/-.

ix) Loss of future earnings: The insurer has sought reduction towards loss of future earnings. The impugned award has granted Rs. 15,00,000/- to Jyoti, however, *Kajal (supra)* had awarded Rs. 14,66,000/- towards loss of future earnings. The appellant- Jyoti being similarly situated, accordingly, is awarded 14,66,000/- instead of 15,00,000/-.

8. No other ground is made out the by the insurer in MAC.APP. 768/2011 for reduction of the impugned awarded amount.

RELIEF

Sr. No.	Particulars	Calculation by Multiplier (Rs.)	Amount (Rs.)
1.	Medical and Sanitary expenses (as per MACT– only modified by using multiplier)	Rs. 60,000 x 18	10,80,000/-
2.	Attendant charges: @ wages of two skilled persons at 2010 notified rates in Delhi (on the lines of compensation granted in Kajal)	6448 x12 x18x 2	27,85,536/-
3.	Physiotherapy @ Rs.500/- per session, average Rs.11,500/- per month for 23 days each month (As per evidence Exh -1/G Colly)	11500 x 12 x 18	24,84,000/-
4.	Wheel Chair		Already granted by order dated 12.09.2019 and 20.11.2019
5.	Loss of marriage prospectus (as per Kajal)		3,00,000/-
6.	Pain & Suffering, Loss of Amenities, Future prospectus		15,00,000/- (as per Kajal)
7.	KAFO @ 99,750/- (as per evidence Exb -1/E Colly)		99,750/-
8.	Special Diet (lifetime)	36,200 x 18	6,51,600/-
9.	Loss of future earnings		14,66,000/- (as per Kajal)

10.	Driver (for a short duration) (as per MACT)		36,000/-
11.	Petrol & Maintenance (as per MACT) (for a short duration towards necessary travel to hospitals, therapy, etc.)		24,000/-
12.	Actual medical expenses	2,52,410 (as granted by MACT) + 5,80,093 (already paid by insurance company as recorded in the order dated 12.09.2019)	8,32,503
	Total		Rs.1,12,59,389/-
	Less awarded by Trial court		Rs.47,49,610/-
	Enhancement		Rs.65,09,779/-

9. The award is enhanced by Rs.65,09,779/-. The total compensation awarded to the appellant-Jyoti Singh is Rs.1,12,59,389/- payable @7.5% p.a. w.e.f. 10.03.2008 i.e. the date of filing of the claim petition before the MACT, till its realization. An amount of Rs.5,80,093/- has already been paid towards 'medical expenses'. The enhanced amount be paid to her in eight weeks.

10. As regards the award of compensation, the appeals stand disposed-off in terms of the above.

NAJMI WAZIRI, J

APRIL 11, 2023

SS/RD

