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PARMINDER SINGH

v.

NEW INDIA ASSURANCE CO. LTD. & ORS.

(Civil Appeal No. 5123 of 2019)

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JULY 01, 2019

[INDU MALHOTRA AND M. R. SHAH, JJ.]

- Motor Vehicles Act, 1988 – Permannet disbaility due to accident – Driver of the offending vehicle not possessing valid driver license – Liability of the Insurance Company – Principle of ‘pay and recover’ – Appellant-driver was driving a car in which a Cabinet Minister in Punjab, was being driven from Ludhiana – Car rammed by a truck coming from the opposite direction at a very high speed and being driven in a rash and negligent manner – Accident occurred due to the contributory negligence of the driver of another truck which was wrongly parked on the road– Minister succumbed to the injuries while the appellant suffered grievous injuries– In Claim Petition filed by the appellant against the owners and drivers of the two offending trucks, along with the insurer of the two offending trucks viz. the Respondent-Insurance Company, MACT awarded the appellant Rs.10,43,666/- along with interest @7.5% p.a. – High Court enhanced the compensation to Rs.21,06,000/- – On appeal, held: MACT computed the compensation payable to the appellant on the basis of notional income of Rs.6,000/- p.m. on the ground that no evidence of his income was produced – Appellant has produced an affidavit by his employer as per which the appellant was earning Rs.10,000/- p.m. at the time of the accident – Taking the income of the appellant as Rs.10,000/- p.m., with future prospects @50% as awarded by the High Court, the total income of the Appellant would come to Rs.15,000/- p.m - Appellant was 23 years old at the time when the accident occurred – Applying the multiplier of 18, the loss of future earnings suffered by the appellant would work out to Rs. $15,000 \times 12 \times 18 =$ Rs. 32,40,000/- – High Court rightly assessed the functional disability of the appellant as 100% – Appellant is suffering from hemiplegia due to which the left side of his body is barely functioning – On account of the permanent*

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disability suffered, the Appellant was deprived of getting married and having a normal family life – His capacity to earn a living has been completely shattered and he has become a dependant person – Compensation awarded towards his medical expenses is highly insufficient – Appellant has undergone 5 surgeries, including a surgery for a severe head injury, and 3 throat surgeries – Rs. 7,50,000/- awarded towards hospitalization and medical expenses incurred in the past – Rs. 10,00,000/- awarded towards medical expenses and attendant charges – View of the High Court that the Respondent is absolved of the liability to bear the compensation, as evidence has been produced from the office of the Regional Transport Office to prove that the drivers of the two offending trucks were driving with invalid driving licenses, affirmed – Respondent entitled to recover the amount from the owners and drivers of the two offending trucks.

Allowing the appeal, the Court

HELD : 1.1 The MACT has computed the compensation payable to the Appellant on the basis of a notional income of Rs. 6,000/- p.m. on the ground that no evidence of his income was produced. The Appellant has however, produced an Affidavit by his employer in Supreme Court. As per the said Affidavit, the Appellant was earning Rs. 10,000/- p.m. at the time of the accident. On the basis of the Affidavit filed by the employer of the Appellant, it is accepted that the income of the Appellant was Rs. 10,000/- p.m. at the time of the accident, for the purpose of computing the compensation payable to him. Taking the income of the Appellant as Rs. 10,000/- p.m., with Future Prospects @50% as awarded by the High Court, the total income of the Appellant would come to Rs. 15,000/- p.m. The Appellant was 23 years old at the time when the accident occurred. Applying the multiplier of 18, the loss of future earnings suffered by the Appellant would work out to $Rs. 15,000 \times 12 \times 18 = Rs. 32,40,000/-$. The High Court has rightly assessed the functional disability of the Appellant as 100%. The Appellant is suffering from hemiplegia due to which the left side of his body is barely functioning. On account of the permanent disability suffered, the Appellant was deprived of getting married and having a normal family life. His capacity to earn a living has

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- A been completely shattered for the rest of his life, and he has a become fully dependant person. [Paras 5, 5.1-5.5] [993-B-G]
- 1.2 In the present case, it is an admitted position that it is not possible for the Appellant to get employed as a driver, or do any kind of manual labour, or engage in any agricultural operations
- B whatsoever, for his sustenance. In such circumstances, the High Court has rightly assessed the Appellant's functional disability at 100% insofar as his loss of earning capacity is concerned. The Appellant is, therefore, awarded Rs. 32,40,000/- towards loss of earning capacity. The compensation awarded to the Appellant towards his medical expenses is highly insufficient. The Appellant has undergone 5 surgeries, including a surgery for a severe head injury, and 3 throat surgeries. The Appellant has not been awarded any amount whatsoever either by the MACT, or the High Court for the successive hospitalizations, surgeries and medical treatment. In view of the facts and circumstances of the
- C case, it would be just and fair to award a lump sum amount of Rs. 7,50,000/- towards hospitalization and medical expenses incurred in the past by the Appellant. The Appellant was produced before the Court. He was in an extremely pitiable state. On account of the removal of the frontal bone of the skull, half of his
- E head has caved in. Furthermore, a deep circular incision was made in his throat, and his body was in an unstable condition, undergoing tremors. The Appellant is further suffering from hemiplegia, due to which the left side of his body is not functioning properly. Given the debilitated state of the Appellant, no amount of money can compensate him. He has been in this condition
- F since the age of 22 years when the accident took place, and will remain like this throughout his life. The Appellant has also been deprived of having a normal married life with a family, and would require medical assistance from time to time. Being completely dependant, he would require the help of an attendant throughout his life. In view of these uncontested facts, a lump sum amount of Rs. 10,00,000/- is awarded to the Appellant towards medical expenses and attendant charges. [Paras 5.6-5.9] [996-D-H; 997-A-D]
- 1.3 The Appellant is entitled to the following amounts: (i) Rs. 32,40,000/- to be awarded towards loss of future earnings by
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taking the income of the Appellant at Rs.10,000/- p.m., and granting Future Prospects @50%; (ii) Rs. 7,50,000/- to be awarded towards repeated hospitalizations and medical expenses for undergoing 5 surgeries and medical treatment; (iii) Rs. 10,00,000/- to be awarded towards future medical expenses and attendant charges; (iv) Interest @ 9% awarded by the High Court from the date of the Claim Petition, till the date of recovery to be maintained. On the issue of liability to pay the compensation awarded, the view taken by the High Court that the Respondent—Insurance Company is absolved of the liability to bear the compensation, as evidence has been produced from the office of the Regional Transport Office to prove that the drivers of the two offending trucks were driving on the basis of invalid driving licenses, is affirmed. The owners and drivers of the offending trucks have not appeared at any stage of the proceedings, including this Court. The Respondent – Insurance Company is entitled to recover the amount from the owners and drivers of the two offending trucks. [Paras 6, 7] [997-E-H; 998-A-E]

Govind Yadav v. The New India Insurance Company Ltd., (2011) 10 SCC 683 ; *K. Suresh v. New India Assurance Company Ltd.*, (2012) 12 SCC 274 : [2012] 11 SCR 414 ; *Raj Kumar v. Ajay Kumar and Ors.*, (2011) 1 SCC 343 : [2010] 13 SCR 179 ; *Shamanna & Ors. v. The Divisional Manager, The Oriental Insurance Co. Ltd. & Ors.* 2018 (9) SCC 650 [2018] 9 SCR 486 – relied on.

<u>Case Law Reference</u>			F
(2011) 10 SCC 683	relied on	Para 5.5	
[2012] 11 SCR 414	relied on	Para 5.5	
[2010] 13 SCR 179	relied on	Para 5.5	
[2018] 9 SCR 486	relied on	Para 7.1	G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5123 of 2019.

From the Judgment and Order dated 20.09.2017 of the High Court of Punjab and Haryana at Chandigarh in F.A.O. No. 10473 of 2014 (O&M).

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A Bikash Chandra, Dinesh Mohan Sinha, Varinder Kumar Sharma, Advs. for the Appellant.

S. L. Gupta, Ms. Shalu Sharma, Advs. for the Respondents.

The Judgment of the Court was delivered by

B **INDU MALHOTRA, J.** Leave granted.

1. The present Civil Appeal has been filed by the claimant to challenge the Judgment and Order dated 20.09.2017 passed in FAO No. 10473 of 2014 by the Punjab & Haryana High Court at Chandigarh.

C 2. The background facts in which the present Civil Appeal has been filed, briefly stated, are as follows:

2.1. On 29.03.2009, the Appellant – driver, was driving a Hyundai Elantra car in which Captain Kanwaljit Singh, a Cabinet Minister in Punjab, was being driven from Ludhiana.

D 2.2. At about 5:15 p.m., when the car reached near Village Khanpur, a truck bearing Registration No. HR-55-B-9491 was being driven in a rash and negligent manner, which came from the opposite direction at a very high speed, and rammed into the car. The accident occurred due to the contributory negligence of the driver of another truck bearing Registration No. HR-58-A-9791, which was wrongly parked on the road.

E 2.3. As a result of the accident, Captain Kanwaljit Singh and the Appellant – driver sustained grievous injuries. Captain Kanwaljit Singh succumbed to his injuries on the same day while undergoing treatment in the hospital. The Appellant – driver survived, but became permanently disabled.

F 2.4. The Appellant suffered from grievous injuries, including a head injury with traumatic subarachnoid hemorrhage, and had to undergo a hemi-craniotomy i.e. removal of front bone of the skull. He further suffered fracture of both jaw bones, and disfigurement of his face. Due to the severe head injury, his left arm and leg were not functioning properly. The Appellant had to undergo 5 surgeries for which he required successive hospitalizations. He had to visit PGI, Chandigarh on various dates for follow-up treatment as an outdoor patient.

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- 2.5. The Appellant was assessed by a Medical Board on 08.09.2010, and on examination it was found to be an operated case with hemiplegia i.e. weakness of one half of the body on the left side. The doctor opined that the Appellant shall not be able to work as a labourer, or do agricultural work, or work as a driver. His disability was assessed at 75%, which was permanent in nature. A
- 2.6. The Appellant filed a Claim Petition before the MACT, Panchkula against the owners and drivers of the two offending trucks, along with the insurer of the two offending trucks *viz.* the Respondent – Insurance Company. C
The Appellant contended that he was earning an income of Rs. 10,000/- p.m. as a driver prior to the accident.
- 2.7. The Respondent – Insurance Company pleaded that the drivers of the two offending vehicles were driving the trucks without valid driving licenses. The Insurance Company produced a Licensing Clerk from the RTO Office at Mathura, U.P. who deposed that the driving licenses had not been issued in the name of the drivers by their office. The licenses had been issued in the name of some other persons. D
- 2.8. The MACT, Panchkula *vide* Award dated 25.01.2013, allowed the Claim Petition, and awarded compensation of Rs. 10,43,666/- to the Appellant. E
The MACT proceeded on the basis of a notional income of Rs. 6,000/- p.m., which worked out to Rs. 72,000/- per annum, on the ground that the Appellant did not produce any evidence, nor examine any witness to prove his income. F
The loss of income due to functional disability was assessed at 75% which came to about Rs. 54,000/- per annum. By applying the multiplier of 18 to the income of the Appellant, the compensation on account of loss of future earnings worked out to Rs. 9,72,000/-. The Appellant was awarded a total amount of Rs. 10,43,666/- along with Interest @7.5% p.a. for the injuries suffered by him. G

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- A On the question of liability to pay compensation, the drivers of both the offending trucks were found not to be holding valid and effective driving licenses at the time of the accident. As a result, the MACT held the owners and drivers of the two offending trucks jointly and severally liable to pay compensation to the Appellant. The Insurance Company was absolved of the liability to pay compensation.
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- 2.9. The Appellant filed FAO NO. 10473 of 2014 before the Punjab & Haryana High Court for enhancement of the compensation awarded by the MACT.
- C The High Court *vide* Interim Order dated 11.07.2017, directed the Appellant to be re-assessed by a Medical Board at the Government Hospital, Sector 6, Panchkula. After going through the nature of injuries suffered, and the Disability Certificate, the High Court was of the view that the disability suffered by the Appellant was 100% insofar as his earning capacity was concerned, and he had become fully dependant on his family for survival.
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- The High Court *vide* the impugned Judgment and Order dated 20.09.2017 partially allowed the FAO, and enhanced the compensation awarded to Rs.21,06,000/- . The compensation was enhanced since the Appellant had suffered from 100% disability with respect to his earning capacity. The High Court granted Future Prospects @50% to the income of the Appellant.
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- F The Respondent – Insurance Company was directed to pay compensation to the Appellant in the first instance, and recover the same from the owners and drivers of the two offending trucks.
- G 3. The present Civil Appeal has been filed by the Appellant for enhancement of the compensation to Rs. 1,75,61,000/- since he is permanently disabled, leading a miserable life, and requires a permanent attendant.
- H 4. We have heard the learned Counsel appearing for the Appellant. The Appellant was produced before the Court at the time of hearing. We have also heard the learned Counsel appearing for the Respondent – Insurance Company, and perused the pleadings on record.

The owners and drivers of the two offending trucks did not appear A throughout the proceedings.

5. We find that the MACT has computed the compensation payable to the Appellant on the basis of a notional income of Rs. 6,000/- p.m. on the ground that no evidence of his income was produced. B

5.1. The Appellant has however, produced an Affidavit by his employer in this Court. As per the said Affidavit, the Appellant was earning Rs. 10,000/- p.m. at the time of the accident. C

5.2. On the basis of the Affidavit filed by the employer of the Appellant, we accept that the income of the Appellant was Rs. 10,000/- p.m. at the time of the accident, for the purpose of computing the compensation payable to him. D

5.3. Taking the income of the Appellant as Rs. 10,000/- p.m., with Future Prospects @50% as awarded by the High Court, the total income of the Appellant would come to Rs. 15,000/- p.m. E

5.4. The Appellant was 23 years old at the time when the accident occurred. Applying the multiplier of 18, the loss of future earnings suffered by the Appellant would work out to Rs. 15,000 X 12 X 18 = Rs. 32,40,000/-.

5.5. The High Court has rightly assessed the functional disability of the Appellant as 100%. The Appellant is suffering from hemiplegia due to which the left side of his body is barely functioning. On account of the permanent disability suffered, the Appellant was deprived of getting married and having a normal family life. His capacity to earn a living has been completely shattered for the rest of his life, and he has become fully dependant person. F

In *Govind Yadav v. The New India Insurance Company Ltd.*,¹ this Court held that: G

"18. In our view, the principles laid down in Arvind Kumar Mishra v. New India Assurance Company Ltd.

¹ (2011) 10 SCC 683

- A *(supra) and Raj Kumar v. Ajay Kumar (supra) must be followed by all the Tribunals and the High Courts in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily. If the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident."*

(emphasis supplied)

In *K. Suresh v. New India Assurance Company Ltd.*,² this Court held that:

- D *"10. It is noteworthy to state that an adjudicating authority, while determining quantum of compensation, has to keep in view the sufferings of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned. Hence, while computing compensation the approach of the tribunal or a court has to be broad based. Needless to say, it would involve some guesswork as there cannot be any mathematical exactitude or a precise formula to determine the quantum of compensation. In determination of compensation the fundamental criterion of 'just compensation' should be inhered."*

(emphasis supplied)

G In *Raj Kumar v. Ajay Kumar and Ors.*,³ this Court held that:

"Ascertainment of the effect of the permanent disability on the actual earning capacity involves

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² (2012) 12 SCC 274
³ (2011) 1 SCC 343

three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the

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- A *post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.”*
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- D (emphasis supplied)
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- 5.6. In the present case, it is an admitted position that it is not possible for the Appellant to get employed as a driver, or do any kind of manual labour, or engage in any agricultural operations whatsoever, for his sustenance.
- In such circumstances, the High Court has rightly assessed the Appellant's functional disability at 100% insofar as his loss of earning capacity is concerned. The Appellant is, therefore, awarded Rs. 32,40,000/- towards loss of earning capacity.
- 5.7. We further find that the compensation awarded to the Appellant towards his medical expenses is highly insufficient. The Appellant has undergone 5 surgeries, including a surgery for a severe head injury, and 3 throat surgeries. The Appellant has not been awarded any amount whatsoever either by the MACT, or the High Court for the successive hospitalizations, surgeries and medical treatment.
- In view of the facts and circumstances of the case, it would be just and fair to award a lump sum amount of Rs. 7,50,000/- towards hospitalization and medical expenses incurred in the past by the Appellant.

- 5.8. The Appellant was produced before us. He was in an extremely pitiable state. On account of the removal of the frontal bone of the skull, half of his head has caved in. Furthermore, a deep circular incision was made in his throat, and his body was in an unstable condition, undergoing tremors. The Appellant is further suffering from hemiplegia, due to which the left side of his body is not functioning properly. A
- 5.9. Given the debilitated state of the Appellant, no amount of money can compensate him. He has been in this condition since the age of 22 years when the accident took place, and will remain like this throughout his life. The Appellant has also been deprived of having a normal married life with a family, and would require medical assistance from time to time. Being completely dependant, he would require the help of an attendant throughout his life. B

In view of these uncontested facts, we deem it fit and appropriate to award a lump sum amount of Rs. 10,00,000/- to the Appellant towards medical expenses and attendant charges. C

6. In view of the aforesaid discussion, the Appellant is entitled to the following amounts: D

- i) Rs. 32,40,000/- to be awarded towards loss of future earnings by taking the income of the Appellant at Rs. 10,000/- p.m., and granting Future Prospects @50%;
- ii) Rs. 7,50,000/- to be awarded towards repeated hospitalizations and medical expenses for undergoing 5 surgeries and medical treatment; F
- iii) Rs. 10,00,000/- to be awarded towards future medical expenses and attendant charges;
- iv) Interest @ 9% awarded by the High Court from the date of the Claim Petition, till the date of recovery to be maintained. G

7. On the issue of liability to pay the compensation awarded, we affirm the view taken by the High Court that the Respondent – Insurance Company is absolved of the liability to bear the compensation, as evidence has been produced from the office of the Regional Transport Office to H

- A prove that the drivers of the two offending trucks were driving on the basis of invalid driving licenses. It is also relevant to note that the owners and drivers of the offending trucks have not appeared at any stage of the proceedings, including this Court.
 - B 7.1. This Court in *Shamanna & Ors. v. The Divisional Manager, The Oriental Insurance Co. Ltd. & Ors.*, held that if the driver of the offending vehicle does not possess a valid driving license, the principle of ‘pay and recover’ can be ordered to direct the insurance company to the pay the victim, and then recover the amount from the owner of the offending vehicle.⁴
 - C 7.2. We deem it just and fair to direct the Respondent – Insurance Company to pay the enhanced amount of compensation as indicated in Para. 6 above, to the Appellant within a period of 12 weeks from the date of this judgment. The Respondent – Insurance Company is directed to make out a Demand Draft in the name of the Appellant, which can be used for his care for the rest of his life. The Respondent – Insurance Company is entitled to recover the amount from the owners and drivers of the two offending trucks.
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- E The Civil Appeal is allowed in the aforesaid terms. All pending Applications, if any, are accordingly disposed of.

Ordered accordingly.

Divya Pandey

Appeal allowed.

⁴ (2018) 9 SCC 650