

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE ACHAL KUMAR PALIWAL**

**MISC. APPEAL No.29/2019**

**BETWEEN:-**

**SMT. MAMTA YADAV W/O MANOJ YADAV  
OCCUPATION: TEACHER R/O 202/1,  
VRANDAWAN DHAM, NANAKHEDA, UJJAIN  
(MADHYA PRADESH)**

**.....APPELLANT**

**(SHRI NITIN SINGH BHATI, LEARNED COUNSEL FOR THE  
APPELLANT).**

**AND**

- 1. AMRAT SINGH S/O SHRI RAM SAXENA  
THURJI, AGED ABOUT 45 YEARS,  
OCCUPATION: DRIVER BEHKA,  
RAMPUR, P.S. SORIK DISTRICT  
KANNOJ (U.P.) /PRESENT ADDRESS:  
AHMADABAD BANGAL, ROADWAGE,  
PRIVATE LIMITED 1295/1 B  
KAPASHERA VILLAGE APPOSITE DC  
OFFICE, DELHI (DELHI)**
  
- 2. AHMADABAD BANGAL ROADWAGE,  
PRIVATE LIMITED, 1295/1, B  
KAPASHERA VILLAGE APPOSITE DC  
OFFICE (DELHI)**

3. **BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LTD. DIVISIONAL OFFICE - COMMERCE HOUSE SEVEN RACE COURSE ROAD, INDORE (MADHYA PRADESH)**

**....RESPONDENTS**

***(SHRI MAYANK UPADHYAY, LEARNED COUNSEL FOR THE RESPONDENT [R-3]).***

.....  
Reserved on : 18.12.2023.

Pronounced on : 22.12.2023.  
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*This miscellaneous appeal having been heard and reserved for orders, coming on for pronouncement this day, **Justice Achal Kumar Paliwal** pronounced the following:*

### **ORDER**

This appeal by the claimant under section 173(1) of the Motor Vehicles Act is arising out of the award dated 14.09.2018 passed by IIIrd Additional MACT, Ujjain in Claim Case No.20/2018 seeking enhancement of compensation awarded by the Tribunal.

2. Learned counsel for the appellant after referring to Para No.88 of impugned award and Ex.P/144 (Bank Pass Book) submits that from evidence on record, it is clearly established that at the time of accident appellant was working as a Teacher in a Coaching Institute and thereby earning Rs.8500/- per month but learned Tribunal has wrongly determined her monthly income as Rs.5000/- per month. It is also urged that Tribunal has wrongly assessed loss of earning

capacity as 60%, whereas in the instant case, it is apparent that appellant's right hand has been amputated from below shoulder and eye sight of left eye has been completely lost. Therefore, learned Tribunal should have held that there is 100% loss of earning capacity. In this connection, he has relied upon decision of the Bombay High Court in the case of *Sarnam Singh vs. Shriram General Insurance Co. Ltd. & Ors. – 2023 LiveLaw (SC) 498* to bolster his submissions. It is also urged that in view of above, the Tribunal has wrongly held physical permanent disability 40%. He has also submitted that insufficient amount has been awarded for loss of amenities. It is also urged that Tribunal has wrongly deducted Rs.3,07,067/- on account of amount received under medi-claim policy. In this connection, he has relied upon *Reliance General Insurance Co. Ltd. Vs. Aman Sanjay Tak (First Appeal No.1051/2022 dated 12.04.2023)*. It is also urged that Tribunal has not awarded any amount for future medical expenses.

3. Learned counsel for the respondent/Insurance Company after referring to Ex.P/35 and Para 82 of impugned award and deposition of witness PW/4 submits that learned Tribunal has rightly held that appellant has failed to prove that she was earning Rs.8500/- per month. Learned Tribunal has held that on the basis of entries in the bank passbook, it cannot be said that appellant was earning Rs.8500/- per month. It is also urged that from deposition of PW/4 itself, it is established that he is not Director of the Institute. Therefore, at the most, appellant's monthly income can be assessed as Rs.6000/- per month. It is also urged that Tribunal has rightly held physical disability as 40% and loss of earning capacity as 60%.

Learned counsel for the respondent/Insurance Company after referring to impugned award, especially, Para 101 submits that Tribunal has awarded sufficient amount for loss of amenities, future medical expenses etc and has rightly deducted the amount received on mediclaim as Rs.3,07,067/-. In this connection, he has relied upon decision of the Karnataka High Court in the case of *New India Assurance Co. Ltd. Vs. Sri Manish Gupta (M.F.A.No.6950/2007 dated 11.10.2012)*.

4. I have heard learned counsel for the parties and have perused the record.

**Factual analysis:**

**Income:**

5. So far as income of appellant is concerned, as per findings recorded by the Tribunal, especially in para-86 & 89, it is clearly established that at the time of accident, appellant was working as Teacher. The accident has occurred on 07.06.2015. It is correct that Tribunal has discarded bank passbook Ex.P/35 and has held that appellant has failed to prove her income as Rs.8500/- per month. But, if notification issued by Labour Commissioner under Minimum Wages Act is perused, then, it is apparent that on the date of accident minimum wages of a skilled labour was Rs.8,735/- per month. Admittedly, appellant is a Teacher. Hence, her monthly income cannot be assessed less than that of a skilled labour. Hence, in this Court's opinion, it would be just and proper to determine appellant's monthly income as Rs.8500/-.

**Percentage of PDC:**

6. In the instant case, it is established that appellant's right hand from below shoulder has been amputated and eye sight of right eye has also been completely lost in the accident. So far as loss of earning capacity is concerned, Tribunal has held that loss of earning capacity is 60%. In the instant case, appellant is proved to be a Teacher at the time of accident. Hence, percentage of loss of earning capacity as determined by the Tribunal appears to be proper i.e 60%. Percentage of physical disability i.e. 40% is also proper.

**Deduction for medi-claim policy:**

7. As per para-75 of the impugned award, Tribunal has determined medical expenses as Rs.4,48,042/- but perusal of para-75, 76, 77, 78 & 101 of impugned award reveal that Tribunal has deducted an amount of Rs.3,07,067/- on account of amount received under medi-claim policy. Hence, after deducting above amount of medi-claim policy (i.e. Rs.4,48,042 – Rs.3,07,067=Rs.1,40,975/-) under the head of medical expenses, Rs.1,40,975/- has been awarded.

8. Now the question arises whether amount received under medi claim policy can be deducted from total amount of medical expenses. Learned counsel for the appellant after relying upon the decision of the Bombay High Court in the case of *Reliance General Insurance Co. Ltd. Vs. Aman Sanjay Tak (First Appeal No.1051/2022 dated 12.04.2023)* submits that any amount received under medi claim policy cannot be deducted whereas learned counsel for the Insurance Company after relying upon the decision of the Karnataka High Court in the case of the *New India Assurance*

*Co. Ltd. Vs. Sri Manish Gupta (M.F.A.No.6950/2007 dated 11.10.2012)* submits that amount received under medi claim policy has to be deducted from the amount payable to appellant for medical expenses.

9. So far as above controversy between the parties is concerned, issue stands settled by Hon'ble Apex Court in the case of *Sebastiani Lakra and others vs. National Insurance Company Ltd. And another – AIR 2018 SC 5034*. In the aforesaid case, the Apex Court in para-12, 13, 14, 15 & 16 has held as under:

“12. The law is well settled that deductions cannot be allowed from the amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment to a kin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts accrued to the dependents or the legal heirs of the deceased on account of his death in a motor vehicle accident. The claimants/dependents are entitled to ‘just compensation’ under the Motor Vehicles Act as a result of the death of the deceased in a motor vehicle accident. Therefore, the natural corollary is that the advantage which accrues to the estate of the deceased or to his dependents as a result of some contract or act which the deceased performed in his life time cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependents only after his death.

13. As far as any amount paid under any insurance policy is concerned whatever is added to the estate of the deceased or his dependents is not because of the death of the deceased but because of the contract entered into between the deceased and the insurance company from where he took out the policy. The deceased paid premium on such life insurance and this amount would have accrued to the estate of the deceased either on maturity of the policy or on

his death, whatever be the manner of his death. These amounts are paid because the deceased has wisely invested his savings. Similar would be the position in case of other investments like bank deposits, share, debentures etc.. The tort-feasor cannot take advantage of the foresight and wise financial investments made by the deceased.

14. As far as the amounts of pension and gratuity are concerned, these are paid on account of the service rendered by the deceased to his employer. It is now an established principle of service jurisprudence that pension and gratuity are the property of the deceased. They are more in the nature of deferred wages. The deceased employee works throughout his life expecting that on his retirement he will get substantial amount as pension and gratuity. These amounts are also payable on death, whatever be the cause of death. Therefore, applying the same principles, the said amount cannot be deducted.

15. As held by the House of Lords in *Perry v. Cleaver*<sup>7</sup> the insurance amount is the fruit of premium paid in the past, pension is the fruit of services already rendered and the wrong doer should not be given benefit of the same by deducting it from the damages assessed.

16. Deduction can be ordered only where the tort-feasor satisfies the court that the amount has accrued to the claimants only on account of death of the deceased in a motor vehicle accident.”

**10.** Whenever a person takes medi claim insurance policy he has to deposit annual / monthly premium, as the case may be. Hence, in view of law laid down by Hon’ble Apex Court in **Sebastiani Lakra (supra)**, in this Court’s opinion, amount received by appellant under medi claim i.e. Rs.3,07,067/- cannot be deducted from

medical expenses. Hence, appellant is entitled for Rs.4,48,042/- as medical expenses.

**Loss of amenities etc.**

**11.** Perusal of para-101 of impugned award reveal that Tribunal has awarded Rs.50,000/- for conveyance, nourishing diet, attendant charges and other expenses; Rs.50,000/- for pain and suffering, Rs.25,000/- for loss of amenities and Rs.25,000/- for loss of life expectation. Tribunal has also awarded Rs.50,000/- for future medical expenses.

**12.** From evidence on record, it is apparent that at the time of accident, appellant was aged 46 years 10 months and her right hand has been amputated from below shoulder and she has completely lost eye sight of left eye. Therefore, in view of above, it would be just and proper to award lump sum amount of Rs.3 lakhs for pain and suffering, loss of amenities, loss of life expectation etc.

**13.** In view of discussion in the foregoing paras, compensation is recalculated as under:

Permanent disability (Loss of future earning capacity)	Rs. 10,34,280/- (i.e. Rs.8500+30% FP=11,050 x 12=1,32,600 x 13 (multiplier)=17,23,800 x 60/100 (PD))
Medical expenses	Rs.4,48,042/-
Other conventional heads i.e. pain & suffering, loss of	Rs.3,00,000/-



amenities, loss of expectation of life, conveyance, attendant charges, nourishing diet etc.	
Future medical expenses	Rs.50,000/-
Loss of income during treatment	Rs.1,02,000/- (i.e.Rs.8500x12)
<b>TOTAL</b>	<b>Rs.19,34,322/-</b>

**14.** Thus, the just and proper amount of compensation in the instant case is Rs.19,34,322/- as against the award of the Tribunal of Rs.10,09,400/-. Accordingly, the appellant is entitled to an additional sum of Rs.9,24,922/- over and above the amount which has been awarded by the Tribunal.

**15.** In the result, the appeal is partly allowed by enhancing the compensation amount by a sum of Rs.9,24,922/-. The enhanced amount shall bear interest at the same rate as awarded by the Tribunal. The other findings recorded by the Tribunal shall remain intact.

**16.** Appeal stands disposed of accordingly.

**(ACHAL KUMAR PALIWAL)**  
**JUDGE**