(2019) 12 DEL CK 0436

In the Delhi High Court

Case No : MAC.APP. No. 440, 901 Of 2019, Civil Miscellaneous Application No. 15926 Of 2019

Shriram General Insurance Coltd — APPELLANT

Vs

Neetu Lodhi & Ors — RESPONDENT

Date of Decision : 20-12-2019

Acts Referred:

Citation : (2019) 12 DEL CK 0436

Hon'ble Judges : Najmi Waziri, J

Bench : Single Bench

Advocate : Siddharth Yadav, Arun Yadav, S.N. Parashar, B.R. Sharma

Final Decision : Disposed Of

Judgement

Najmi Waziri, J

MAC.APP. 440/2019 & CM APPL. 15926/2019

1. This appeal impugns the award of compensation dated 31.10.2018 passed by the learned MACT in Suit No.279/17, on the ground that the Income Tax Returns, filed after the date of the accident, have been taken into consideration while computing the compensation payable to the injured/claimant. The impugned order has dealt with this issue as under:-

"(v) Loss of income : In her affidavit of evidence Ex. PW1/A, claimant has stated that she is a trained Beautician She was working as a Salon Service Provider in Delhi and NCR and she was getting business from Urban Clap Tech. India. P. Ltd., in accordance with the Minimum Guarantee Agreement dated 03.08.2015 (Ex. PW1/6) as per which Urban Clap provide a minimum business of Rs.45,000/- per month and used to charge 20% commission on business provided by Urban Clap, She has filed Income Certificate from January, 2016 to January, 2017 from M/s Urban Clap as Ex. PW1/7 showing earnings of Rs.8,02,589/- per annum.

She has claimed that she was earning a profit of Rs,5,00,000/- per annum after paying 20% commission to Urban Clap.

To prove her business with Urban Clap, claimant examined Shri Rupinder Singh, Category Manager, Urban Clap Technologies India Pvt. Ltd. as PW2 who proved copy of Minimum Guarantee Agreement effective from August, 2016 for a period of one year as Ex. PW2/2. Perusal of Agreement Ex. PW2/2 shows that Urban Clap shall provide a minimum business of Rs.45,000/- per month to the claimant and shall charge 20% commission on business provided by Urban Clap. During his cross-examination, PW2 was shown aforementioned Income Certificate Ex. PW-1/7 to which he confirmed that the said document was issued from Urban Clap. He stated that the amount of Rs.8,02,589/- shown in Ex. PW1/7 includes 20% commission of Urban Clap but the cost of consumables were borne by the claimant herself.

During her cross-examination, PW1 (claimant) has admitted that the amount of Rs.8,02,589/- shown in Ex, PW1/7 is not her earnings but was only the booking amount.

In such circumstances, the best document which could show the earnings of claimant would be her ITR. Even otherwise, income from all sources should be reflected in ITR filed by an income tax assessee. ITR of claimant for the assessment year 2017-18 is filed on record as Ex. PW1/8 which shows her income as Rs.4,04,830/- and tax paid as Rs.11,980/-. Hence income of claimant is taken as Rs. 3,92,850/- per annum (Rs.4,04,830/- minus Rs.11,980/-).

While answering to Court Question regarding financial needs, claimant has stated that she is not in a position to work after the accident. Claimant suffered crush injuries on both lower limbs in the accident due to which her both lower limbs above knee were amputated and she suffered 99% permanent physical impairment in relation to her both lower limbs. She has not been able to even perform day to day chores, what to speak of working. In view of the nature of injuries suffered by the claimant, claim of injured that she is not able to work after the accident seems to be just.

Accident took place on 25.04.2017. She is therefore awarded a sum of Rs.5,89,275/- towards loss of income from the date of accident till today (for one year and 6 months)."

2. What emanates from the above is that the claimant was rendering services as a beautician through a well-based service provider called 'Urban Clap'. She was earning roughly Rs. 45,000/- per month. This amount was going directly into her bank account from Urban Clap. The said agency/company is a modern day service provider, at the convenience of the customers. It involves some degree of internet based sophistication. It requires the beautician to visit the customers. The charges for services provided by Urban Clap would ordinarily not be of lesser amount. The rates, however, are not specified by the appellant. The aforesaid payments received by the claimant have not been challenged or doubted in any way.

Therefore, for the learned Tribunal to have passed its assessment on the basis of ITRs, is with good and justifiable reason. There is no merit in this contention, hence, it is rejected.

3. The appellant next submits that there is a cost of consumables in the services rendered by the claimant, as she has admitted in her cross-examination that the cost of consumables is borne by her. The appellant is not able to quantify the cost of consumables.

4. The Court would note that consumables in services like threading, haircut, head or body massage, as well as manicure/pedicure, would not necessarily incur any expenses as these services entail pure physical labour and skill. In the circumstance, 5% is fixed towards consumables, to be deducted from the income of the deceased.

5. The appeal, alongwith pending application, stands disposed-off in the above terms.

6. Since the appellant-insurance company has succeeded partly in its appeal, the statutory amount, alongwith interest accrued thereon, be returned to it.

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7. In the cross-appeal the claimant has sought enhancement of the award of compensation. She was 33 years of age and in the prime of her life at the time of the motor accident. She was working with Urban Clap which is a modern day service provider through internet and was earning Rs. 45,000/-per month as revenue. With experience and acquired skills and more clientele, who with familiarity, would prefer her services with the passage of time, her earnings would have increased. With time, she could well have increased the fees for her services. But now both her limbs have been amputated above the knee due to the unfortunate accident. Her mobility has been restricted almost entirely. The services she was rendering to her clientele as a beautician, which could be required in any part of the city; including residents of posh localities would now largely be curtailed due to her restricted travelling. Even if she were able to reach some clients, they may well not be as receptive to the personal services from an incapacitated person. Therefore, her debilitating disability ought to be considered as 100% functional disability.

8. The Court would note that the claimant would also be entitled to compensation towards 'loss of future prospects'. In terms of the dicta of the Supreme Court in Parminder Singh v. New India Assurance Co. Ltd. & Ors 2019 SCC OnLine SC 802, she is entitled to an addition of 50% towards 'future prospects'. The same is granted to her.

9. The learned counsel for the claimant submits that the claimant has two minor children. Consequently, not only the children but the unfortunate mother/victim would also be deprived of the little pleasure of building relations with her children as an able-bodied mother would.

10. The Court would further note that the compensation towards 'mental and physical shock', 'pain and suffering', 'loss of amenities of life' and 'disfigurement' i.e. Rs.50,000/-, Rs. 50,000/-, Rs.1 lac and Rs. 1 lac, respectively, is obviously on the lesser side. Accordingly, compensation under each of the aforementioned heads is enhanced to Rs. 3 lacs, Rs. 3 lacs, Rs. 4 lacs and 8 lacs, respectively.

11. Thus, the amount payable to the claimants is as under:-

S.No.

Particulars

Amount

1.

Loss of Earning [Rs.45,000/-(monthly income) x 12 (months) x 150/100(future prospects) x 16 (multiplier) x 100% (disability) Less: 5% deduction (cost of consumables)

Rs. 1,23,12,000/-

2.

Mental and Physical Shock

Rs. 3,00,000/-

3.

Pain and Suffering

Rs. 3,00,000/-

4.

Loss of amenities of life

Rs. 4,00,000/-

5.

Disfigurement

Rs. 4,00,000/-

TOTAL

Rs.1,37,12,000/-

12. Let the aforesaid amount alongwith interest accrued thereon @9% from the date of filing of the DAR till its realization be deposited before the learned Tribunal, within three weeks from the date of receipt of copy of this order, to be released to the beneficiaries of the Award in terms of the scheme of disbursement specified therein. Upon deposit of the requisite amount, Rs. 5 lacs

shall be released right away into the bank account of the injured maintained near her place of residence. The remaining amount shall be kept in an interest bearing FDR for the benefit of the claimant. She may consider putting at least half of the aforesaid amount in equal quantum for the benefit of her two minor children.

13. The injured-claimant is present in the Court; she is on a wheelchair. She is evidently unable to move about without assistance, she is unable to move the wheelchair with ease. She is not able to get up from the wheelchair despite the fitment of the prosthetic limbs. Her inability to perambulate or to stand on her legs is obviously going to affect her daily life and severely restrain her efforts to rehabilitate herself. Her inability to take care of her minor children fully will haunt her for her entire life. This restricted movement needs to be alleviated to the maximum extent possible.

14. The Court would note that the wheelchair of the injured-claimant is of the most rudimentary variety, she needs to be given a better wheelchair. Let a motorized wheelchair be made available to her within two weeks from the date of receipt of copy of this order. The suitability and comfort of the wheelchair shall be as per the assessment of the injured-claimant. The insurer shall pay the supplier of the wheelchair, the cost of the purchase of the same on the basis of an advance invoice.

15. The Court has been informed that the wheelchair would be in the range of Rs. 1,60,000/-. The same shall carry a lifetime warranty; should the wheelchair need to be repaired or replaced, the same shall be done entirely at the cost of the insurer. Furthermore, the insurer shall furnish three telephone numbers of its senior officers who shall immediately attend to her complaints apropos any problem in the functioning of the said contraption. Additionally, the insurer shall, by the 5th day of January and August each year, on its own, assess the functioning of the said wheelchair and in case of any difficulty faced by the injured-claimant, the insurer shall promptly cure such defects to obviate any difficulty to the injured-claimant.

16. The appeal stands disposed-off in the above terms.