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THE HIGH COURT OF DELHI AT NEW DELHI

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MAC APPEAL No.54 OF 2009

**Reserved on: 23.09.2011
Pronounced on: 01.11.2011**

SALEEM KHAN

..... Appellant

Through: Mr. S.N. Parashar, Advocate

Versus

SRI SURESH & ORS.

..... Respondents

Through: Mr. K.L. Nandwani with Mr.
Sanjay Relan, Advocates for
R-3

**CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA**

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not ? | No |
| 3. | Whether the judgment should be reported in the Digest ? | No |

M.L. MEHTA, J.

1. This is an appeal directed against the impugned award dated 29.9.2008 passed by learned Motor Accident Claims Tribunal ("the Tribunal" for short) whereby a sum of ₹2,01,070/- was awarded by the Tribunal to the appellant/ claimant as compensation in a Claim Petition No.505/06 which he had filed for seeking compensation on account of injuries sustained by him in

a road accident which took place on 13.02.2006 when he was on a bicycle and he was struck by a truck bearing registration number DL-IG-2695 being driven by respondent Suresh allegedly in a rash and negligent manner. The said compensation of ₹2,01,070/- is made up of ₹1,29,532/- on account of permanent disability; ₹11,538/- towards medical treatment; ₹10,000/- towards conveyance and special diet and ₹50,000/- on account of pain and suffering and loss of amenities of life. The present appeal has been filed by the claimant/ appellant seeking enhancement of compensation. The main grievance of the appellant/ claimant is that the learned Tribunal has failed to appreciate that he has suffered amputation of his right leg and so was not able to perform his job of salesmanship and further that he has suffered disability to the extent of 50%, but the Tribunal has reduced the same to 30%. It was also his grievance that the Tribunal has erred in not considering his income to be ₹8,000/- per month from salesmanship and deducted 1/3rd thereof towards his personal living expenses, compensation of ₹50,000/- towards loss of amenities of life and pain and suffering is also alleged to be on lower side. The next grievance of the appellant is that the Tribunal has not considered that he would be required to use artificial limb which will cost more than ₹ 1 lac and it will have to be changed the same from time to time. The awarding of

compensation of ₹10,000/- towards conveyance and special diet is also alleged to be on much lower side.

2. With regard to the treatment, the appellant has placed on record medical bills showing the expenses incurred in the sum of ₹11,538/-. This being the entire amount incurred on account of medical treatment, the same was granted by the Tribunal. I consider that the same does not suffer from any infirmity.

3. The Tribunal has awarded ₹1,29,532/- as compensation for permanent disability taking the same to be 30% as loss of earning capacity against the disability of 50% below knee as per the disability certificate proved by the doctor. The doctor who appeared in the witness box was cross examined and deposed that the disability on the earning capacity of the injured was to depend on the kind of work which he was doing. The Tribunal has recorded the finding that since the appellant has failed to prove on record the kind of work he was doing, he could still carry on the same work which he was doing though not with the same efficiency and strength. Based on these observations, he assessed the loss of earning capacity to the extent of 30%. Though the appellant stated to be working as salesman and earning ₹8,000/- per month, but he failed to prove the same before the Tribunal and also did not assert the same before this Court. In such circumstances, there was no illegality

committed by the Tribunal in assessing the loss of earning capacity to be 30%.

4. It is settled law that in all injury cases, assessment of disability does not impact the earning capacity and that the disability has to be seen in the context of the particular occupation or the nature of avocation of injured. It is not that in every case when a disability certificate states that the injured has suffered permanent disability to the extent of 50% below knee, the same would be with reference to the whole body. The disability of a limb or any part of the body has to be seen as total percentage of the limb and obviously cannot be assumed to the extent of disability of full body. The extent of permanent disability of the limb cannot be considered to be the functional disability of the body nor it could be assumed to result in corresponding incident of loss of earning capacity, as disability would not have prevented him from carrying on his avocation of salesmanship, though it may impede his smooth functioning. In the absence of there being any cogent evidence on record with regard to his avocation and assuming the same to be salesmanship, the permanent disability of 50% of below knee was rightly taken as 30% functional disability and also loss of future earning capacity.

5. In the absence of there being any evidence with regard to the income of the appellant, the Tribunal has rightly taken

prescribed minimum wages and has also given due consideration to the increase in minimum wages by taking the average of the same. He has rightly concluded the loss of monthly income by adding actual income at the time of disability of the appellant/claimant and double the amount of minimum wages and by dividing the same by 2. In this manner, he arrived at monthly average income of the appellant to be ₹4,906.50 paise.

6. The Tribunal has made a deduction of 1/3rd from his income as towards miscellaneous expenses. Learned counsel submitted, and rightly so, that in case of permanent disability, the beneficiary was the victim who was surviving all the deprivation and the Tribunal was not required to make deduction on this account. In that view of the matter, the Tribunal seems to have erred in making deduction of 1/3rd on account of miscellaneous expenses. The age of the appellant being 45 years, the multiplier to be applied was 13 in view of the decision of the Supreme Court in the case of **Sarla Verma and others v Delhi Transport Corporation and another** [2009 INDLAW SC 488] and not 11 as applied by the learned Tribunal. Thus, the Tribunal seems to have erred in assessing the compensation on account of permanent disability. The same is assessed at ₹7,65,336/- [4906x12x13].

7. The Tribunal has awarded ₹10,000/- only as towards conveyance and special diet. Keeping in view the injuries

sustained by the appellant which comprised of amputation and long hospitalization, awarding of sum of ₹10,000/- on both the counts seems to be on lower side. A sum of ₹15,000/- each is assessed as compensation towards conveyance and special diet. The compensation of ₹15,000/- for pain and suffering and loss of amenities of life also appears to be on lower side. The same is assessed at ₹1 lac.

8. In view of above discussion, the appellant/ claimant is entitled to total enhanced compensation of ₹7,30,804/- which the respondent nos.3 being the Insurer is to pay to the claimant/ appellant within a period of 30 days from today and thereafter with interest @ 7.5% per annum till the payment.

9. The appeal stands disposed of.

**M.L. MEHTA
(JUDGE)**

November 01, 2011
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