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THE HIGH COURT OF DELHI AT NEW DELHI

+MAC APPEAL 315/2006

**Reserved on: 30.09.2011
Pronounced on: 15.11.2011**

SH. SAEED

..... Appellant

Through: Mr. Anurag Karna, Adv.

Versus

SH. HEMA KANT & OTHERS

..... Respondents

Through: Mr. L.K. Tyagi, Adv. for R-2

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. In this appeal the appellant has made a challenge to the judgment and award dated 16.01.2006 of Motor Accident Claim Tribunal (MACT), Delhi whereby he had awarded a sum of Rs.3,10,756/- as compensation in the claim petition filed by the appellant for seeking compensation on account of injuries sustained by him in the road accident which took place on 25.11.2003. The appellant was crossing the road when he was hit by bus DL 1 PB 5371 driven by its driver at a very fast speed and in a rash and negligent

manner. Due to impact of the accident, he fell down and sustained grave injuries with multiple fractures in his left leg. He was removed to GTB hospital where he remained admitted from 25.11.2003 to 22.02.2004. Three major operations were conducted on left leg of the appellant and multiple steel rods were inserted in his left leg. Skin grafting was also done on the left leg by taking out flesh from his right thigh. The appellant suffered degloving of left leg besides painful ankylosis of left knee joints and reduced movement of left ankle. He sustained permanent disability of 82 percent. He was aged about 20 years at the time of accident and was working in a metal factory at Muradabad and earning Rs.5,000 to Rs. 6,000/- per month.

2. The tribunal, based on prescribed minimum wages, estimated the income of the petitioner to be Rs.2,784/- p.m. He estimated the financial loss of earning capacity of the appellant to be 40% of the permanent disability of 82%. He assessed total loss of earning capacity to be Rs. 2,27,256/- and awarded compensation of Rs.3,10,756/- in total which was made up of Rs.2,27,256/- on account of loss of earning capacity, Rs.10,000/- on account of expenses, conveyance and special diet, Rs. 8500/- on account of loss of income during the period of treatment, Rs.25,000/- on account of mental pain

and agony and Rs.40,000/- on account of loss of future enjoyment of life.

3. The appellant has assailed the impugned award on the ground that the compensation amount awarded was on much lower side. He has assailed the findings of the learned Tribunal with regard to his assessing loss of earning capacity to be 40% as against his permanent disability of 82%. The award of compensation on account of loss of enjoyment of life, pain and suffering is also alleged to be on much lower side. Likewise, the award of Rs.10,000/- on account of medical expenses, conveyance and special diet was also alleged to be quite meager. The appellant has also assailed the award for not being awarded compensation on account of attendant charges.

4. I have heard the learned counsel for the appellant and for the respondent No. 2/insurance company.

5. The petitioner was stated to be working in a metal factory at Muradabad and earning Rs. 5,000/- to Rs. 6,000/- per month. Neither any evidence was produced regarding his employment nor to the fact that he was earning Rs. 5,000/- to Rs. 6,000/- per month from the factory. In such circumstance the Tribunal has rightly taken the prescribed minimum wages of Rs. 2,784/- per month. There was no dispute with regard to the age of the appellant to be 20 years at the

time of accident. There is also no dispute that judicial notice can be taken of the fact that there is constant increase in minimum wages by the Government keeping in view the rise in prices of essential commodities, inflation and price index. In view of the age of the appellant to be 20 years, it could be expected that he would live long life and in that eventuality, in due course of time, even prescribed minimum wages would also increase considerably. Hence, it can be estimated that the minimum wages which were Rs.2,784/- p.m. (say Rs.2800/-) at the time of accident in the year 2003 would have been at least doubled. Thus, as per judicial decisions, the average monthly income of the appellant can be arrived at by dividing the sum of present minimum wages and double of the present minimum wages. In this manner, the average minimum wages of the appellant could be arrived at Rs. 4200/- per month (Rs.2800/- + Rs. 5,600/- divided by 2).

6. The Tribunal has recorded that there was ample evidence on record with regard to the permanent disability of the petitioner. Dr. Anil Arora, Reader, Orthopedic, GTB Hospital testified regarding the nature of disability suffered by the appellant to be 82% functional loss of left lower limb. To my mind, the Tribunal seemed to have erred in making some guess work in taking the functional disability to

be 40%. In fact, it depends on the facts and circumstances of each case, particularly, in view of the nature of injury and nature of job which the injured was doing. There is no evidence whether the appellant was a skilled worker in the factory or just an ordinary labourer. However, taking into account the case of an ordinary labour, the appellant would definitely be incapacitated of the full use of his left hand. Most of the works which the labourers do, they do with the use of their hands. In the given facts and circumstances of the case, the functional permanent disability can be estimated to be 50% in relation to whole body.

7. The Tribunal applied the multiplier of 17, whereas as per the age of the appellant and in view of the judgment of the Supreme Court in ***Sarla Verma and others v DTC and another*** (2009) ACJ 1298, a multiplier of 18 was to be applied. The appellant could be said to have suffered loss of Rs. 2100/- per month being 50% of his average monthly income and applying the multiplier of 18, his total loss of earning capacity comes out to Rs.4,53,600/- in stead of Rs. 2,27,256/- as assessed by the Tribunal.

8. The Tribunal has awarded Rs. 8,500/- on account of loss of income for three months, which to my mind, comes out to Rs.

12,600/- as per average monthly income of Rs. 4,200/-. The appellant would be entitled to this amount on this count.

9. The Tribunal has not awarded any amount to the appellant on account of his expenses towards attendant charges despite the fact that PW-2 has stated that he was working as attendant for the appellant in the hospital and he received Rs. 100/- per day for about three months. This was a reasonable demand raised by the appellant for which no strict proof was required to be insisted by the Tribunal. The appellant will be entitled to Rs. 10,000/- under the head of expenses for attendant.

10. The Tribunal has awarded Rs. 25,000/- on account of mental pain and agony and Rs. 40,000/- on account of loss of future enjoyment of life. Since the appellant is being granted just and reasonable compensation on account of permanent disability, the award of compensation Rs. 25,000/- and Rs. 40,000/- respectively under these two heads seems to be quite just and reasonable. However, the award of compensation of Rs. 10,000/- only towards expenses for the treatment, conveyance and special diet seems to be on quite lower side. Once the nature of injuries and the type of treatment are believed by the Court and it is also on record that the injured remained hospitalized for quite some time, the expenses of

treatment, conveyance and special diet are unavoidable. Many a times people do not procure or preserve the receipts of these expenses. The Court has to take a holistic view of expenses under these heads. Keeping in view the nature of injuries and period of hospitalization and treatment, a sum of Rs. 10,000/- each is awarded on account of expenses on treatment, conveyance and special diet. Consequently, the appellant would be entitled to the compensation of Rs. 30,000/- collectively on these heads against Rs. 10,000/- awarded by the Tribunal.

11. Accordingly, the appellant would be entitled to a total compensation of Rs.5,71,200/- as against Rs. 3,10,756/- awarded by the Tribunal. The insurance company, being the insurer, is directed to pay the enhanced amount of compensation within 30 days from today to the appellant without interest and if the amount is paid beyond 30 days the same would be paid with interest of 7.5% per annum.

12. The appeal stands disposed of.

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

November 15, 2011
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