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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Judgment: 12.9.2011

+ MAC APPEAL No.531/2011

SH.RAJEEV KUMAR MISHRA Appellant
Through: Ms.Pinki Talukdar, Advocate.

Versus

SH.VINAY YADAV & ORS. Respondents
Through: None.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

1. The award impugned is the Award dated 07.2.2011 vide which the compensation in the sum of ₹8,07,414/- was awarded in favour of the petitioner; the petitioner had suffered grievous injuries; he had suffered permanent disability of 50%; 30% permanent disability had been taken into account as the functional disability.

2. Record shows that the victim had suffered an accident on

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17.01.2007 while he was travelling on his two wheeler scooter; an Indigo car was the cause of the accident; grievous injuries were sustained by the petitioner; petitioner is 34 years of age and at that time as per the case of the petitioner he was carrying on the business of trading and manufacturing of jeans-pants under the name and style of 'M/s G.T. Jeans' at Mukherjee Nagar, New Delhi. Further contention is that he was also hospitalized from 18.01.2007 to 10.2.2007; he suffered 'hemiparalysis' on the right side portion of the body; this made him disabled and unable to work.

3. The permanent disability recorded as per the medical certificate was 50%; as noted supra the Tribunal had noted 30% functional disability which is the first grievance of the petitioner. The second grievance is that the loss of income has been computed for a period of four months only, however, he remained bed ridden for more than one year; the third grievance is that although the two wheeler scooter of the petitioner had been damaged yet no compensation has been awarded on this count. The fourth grievance of the petitioner that he had undergone physiotherapy for which he had incurred a cost of ₹1,50,000/- but he had been awarded ₹50,000/- only on this count. Last grievance relates to the amount awarded under the head of

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'pain and suffering' which according to him the figure computed at ₹40,000/- is again on lower side.

4. The impugned Award had made the calculation as per the guidelines laid down by the Apex Court relating to compensation to be awarded to a victim of grievous injury. The Apex Court in the case of Raj Kumar Vs. Ajay Kumar & Anr., (2011) 1 SCC 343 had laid down following guidelines for grant of compensation of the injured victim of an accident:

"General principles relating to compensation in injury cases

The provision of the Motor Vehicles Act, 1988 ('Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his liability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. (See C.K.Subramonia Iyer, v. T. Kunhikuttan Nair- AIR 1970 Supreme Court 376, R.D. Hattangadi v. Pest Control (India) Ltd.-1995 (1) SCC 551 and Baker v. Willoughby -1970 AC 467)."

5. In the instant case the victim has been paralyzed on the

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right side; 50% disability has been suffered as per the disability certificate and 30% functional disability has been afforded to the petitioner keeping in view the kind of injury suffered by the victim as also the nature of his job. This has been rightly considered by the Tribunal. The multiplier of 17 was applied which was the applicable multiplier and after giving benefit of 30% disability compensation in the sum of ₹4,93,945/- has been awarded towards loss of future income. This calculation arrived was in view of the guidelines of the Apex Court in Raj Kumar (supra); it suffers from no infirmity.

6. Tribunal had afforded a sum of ₹32,284/- as loss of income for a period of four months i.e. the period of time when the victim remained out his normal activity i.e. he could not continue with his business. The medical papers of the victim show that he remained admitted in the hospital i.e. between 18.01.2007 to 10.2.2007 which would be for about 22 days. Petitioner had further on oath deposed that further treatment was carried out at his native village Kanpur; there was no documentary evidence for the said effect. However, keeping in view the fact that right side 'hemiparasis' had been suffered by the petitioner and the Tribunal had assessed his functional disability at 30%; it had in its discretion correctly noted that the petitioner remained out of his

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job for a period of four months. The loss of income for a period of four months in the aforementioned category thus suffers from no infirmity. There was no evidence to the effect that the petitioner had remained bed ridden for more than a year as was contended by him.

7. The two-wheeler scooter of the petitioner had suffered damage; this claim petition had been filed under Section 166 & Section 140 of the Motor Vehicles Act which deals with claims for compensation in respect of accidents involving death or bodily injury to person arising out of the use of the motor vehicle; for damage to the vehicle the petitioner may prefer an independent claim; it is also not the case of the petitioner that his two-wheeler scooter was insured; compensation for damage to the two-wheeler vehicle was thus rightly not considered by the Tribunal.

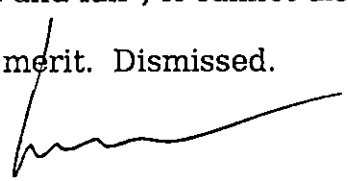
8. Petitioner has also been afforded a sum of ₹50,000/- on account of the treatment meted out by physiotherapist. The MLC of the victim showed that the nature of his injury was grievous; neurology department had examined him and his CT Scan has also been conducted; he had suffered right side 'hemiparalysis'; his right side remained paralyzed; it was but obvious that physiotherapy was required to be conducted on such a patient; ₹50,000/- had been awarded under this head; this was after taking judicial

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notice of this factum.

9. 'Pain and suffering' have also been separately calculated at ₹40,000/-.

10. The factors which were kept in mind by the Tribunal were the nature of the injury suffered by the victim; this being a permanent functional disability of the right limb of the victim; the age of the victim who was 34 years at that time and his being self employed were the other factors. Courts have time and again reiterated that where there is no proof by way of document some kind of a guess work has to be resorted to by the Tribunal. This guess work emanates by and large from the record which is borne out from the aforementioned factors. Keeping in view the said scenario the grant of ₹40,000/- under the head of 'pain and suffering' also suffers from no infirmity; this was under the head of 'non-pecuniary damages'. Discretion having been exercised by the Tribunal fairly the impugned Award does not call for any interference. Compensation has to be 'just and fair'; it cannot also enure as a bonanza. Appeal is without any merit. Dismissed.



INDERMEET KAUR, J.

SEPTEMBER 12, 2011
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