

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 9th November, 2012

+ MAC. APP. 476/2005

ANIL KUMAR

..... Appellant

Through: **Mr.S.N.Parashar, Advocate**

versus

PURAN & ORS.

..... Respondents

Through: **Mr.Manoj R.Sinha, Advocate for R-2**

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appeal is for enhancement of compensation of ₹ 93,900/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the Appellant for having suffered injuries in a motor vehicle accident which occurred on 09.12.2001.
2. In the absence of any Appeal by the driver, owner or the Insurer, the finding on negligence has attained finality.
3. The Claims Tribunal awarded the compensation of ₹ 93,900/- which is tabulated hereunder: -

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Pain & Suffering	₹ 20,000/-

2.	Medicines, Medical Treatment, Special Diet & Conveyance Charges	₹ 17,500/-
3.	Permanent disability	₹ 40,800/-
4.	Loss of Income	₹ 15,600/-
	Total	₹ 93,900/-

4. It is urged by the learned counsel for the Appellant that he suffered permanent disability 15% in respect of his right leg on account of restriction of movement in the knee. The Appellant was working as a driver and thus, there was at least 50% loss in earning capacity. The Claims Tribunal erred in granting the loss of earning capacity to the extent of 7.5%.
5. I have perused the Trial Court record. The Appellant filed a Claim Petition claiming that he was working as a driver and in cross-examination he testified that he was working as a driver of a motor car which was owned by his mother. He admitted that the car was not attached to any taxi stand and it was not a commercial vehicle.
6. In this view of the matter, the Claims Tribunal took the minimum wages of an unskilled worker and granted loss of earning capacity to the extent of 7.5% per month on account of the permanent disability.
7. The Claims Tribunal's finding that the Appellant failed to establish that he was working as a driver cannot be faulted as he did not possess a commercial driving licence and there was no evidence that the vehicle owned by the mother of the Appellant was attached to any taxi stand.

8. Since the Appellant's profession was not established, it is difficult to say that he was a skilled worker, that is, a driver. There was no other evidence to establish loss of earning capacity. In fact, the compensation of ₹ 40,800/- which was awarded by the Claims Tribunal towards permanent disability was really towards loss of amenities in life.
9. In the facts and circumstances of the case, the overall compensation of ₹ 93,900/- in an accident which occurred on 09.12.2001, was just and reasonable.
10. I do not find any ground to interfere with the impugned judgment; the Appeal is devoid of merit; and the same is accordingly dismissed.
11. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

NOVEMBER 09, 2012

v