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

Date of Decision: 5th November, 2012

+ **MAC. APP. 58/2010**

ASHWANI SHARMA Appellant
Through Mr.Suneet Nagpal, Advocate

versus

UPENDER NAYYAR & ANR Respondents
Through None

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 ₹59,276/- awarded in favour of the Appellant by the Motor Accident Claims Tribunal(the

Claims Tribunal) for having suffered injuries in a motor vehicle accident which occurred on 26.06.1991.

2. In the absence of any Appeal by the driver, owner or the insurer, the finding on negligence has attained finality.
3. Immediately after the accident, the Appellant was removed to Dr. R.M.L. Hospital. He was found to have suffered lacerated wound on the left upper arm, left elbow and on the left hand. After treatment, the Appellant was discharged from the hospital on 29.06.1991. He did not recover from the injury and was admitted in Safdarjang Hospital on 24.08.1991. There was restriction of mobility of his fingers and hypertrophied scar on the dorsum of left hand and a diffuse tender swelling over proximate part of the index finger. The Appellant underwent surgery and was discharged from the hospital after two days on 26.08.1991. He remained an outdoor patient in the Safdarjang Hospital till September, 1991. According to the Appellant, he also remained under treatment of some private doctors. The Appellant claimed that he was working with Overnite Express and was earning a salary of ₹4,500/- per month(including perks). The Claims Tribunal was not satisfied with the evidence with regard to the Appellant's income. The Appellant suffered permanent disability to the extent of 10% in relation to his left hand on account of scar over dorsum of hand and malunited fracture of index finger. The Claims Tribunal, as stated earlier, awarded a compensation of ₹59,276/-, which is tabulated hereunder:

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Pain and Suffering	₹15,000/-
2.	Medicines, Medical Treatment, Conveyance and Special Diet	₹ 5,700/- ₹ 5,000/-
3.	Loss of Leave	₹ 18,576/-
4.	Permanent Disfigurement	₹ 10,000/-
5.	Loss of Enjoyment and Amenities of Life	₹ 5,000/-
	Total	₹ 59,276/-

4. The following conditions are raised on behalf of the Appellant:

- (i) The Claims Tribunal erred in awarding compensation on account of loss of earning capacity on the basis of the minimum wages of an unskilled worker. The Appellant's testimony with regard to his income was not challenged which was proved by a copy of the Income Tax Return placed on record.

- (ii) The Appellant had to take leave for a period of more than two months. No compensation was awarded on account of loss of leave.
- (iii) The compensation awarded towards permanent disfigurement and loss of amenities and conveyance and special diet as also on account of pain and suffering is on the lower side.

LOSS OF EARNING CAPACITY:

5. I have before me the Appellant's testimony who examined himself as PW1. It is not in dispute that the Appellant was aged 26 years on the date of the accident. He testified that he was working as a Branch Manager with Overnite Express Ltd., 11098-B, East Park Road, Vivekanand Gali, New Delhi and was drawing a salary of ₹3,500/- and allowance of ₹1,000/- per month. This fact was also stated in the Claim Petition. The Appellant also sought to summon PW7 Yashpal Sharma, Personnel Manager of Overnite Express. This witness deposed that he was employed with Overnite Express for the last about six years. He deposed that the service record of the Appellant(Ashwani Sharma) who was alleged to be working with Overnite Express till the year 1991 is not available as the record is destroyed after a period of seven years. The Appellant also placed on record the Income Tax Return for the A.Y. 1991-92 along with computation of income (Mark H). This shows that the Appellant received a gross salary of ₹36,900/- from Overnite Express. He had an income of ₹250/- from interest and income of ₹4,350/- from

tuitions. There was a liability of tax to the extent of ₹372/- which was duly paid. There is no rebuttal to the Appellant's testimony and the documentary evidence produced.

6. In his cross-examination, the Appellant deposed that on the date of the recording his statement, that is, 09.02.2004 he was working as a Management Consultant of D.T.A. Consulting, 4-D White House, 10, Bhagwan Dass Road, New Delhi and was getting salary and perks of ₹1,00,000/- per month. It is important to note that the Appellant did not conceal his income after the accident. He left his job with M/s. Overnite Express in the year 1991 itself. It is true that the Appellant's future income has not decreased on account of permanent disability. The disability certificate issued by the Medical Board of DDU Hospital clearly shows that the Appellant suffered 10% permanent disability in relation to his left hand, on account of scar over dorsum of hand and malunited fracture of index finger. The index finger plays an important role in the movement of a hand. The Claims Tribunal took loss of earning capacity to be 10%. No expert evidence was produced by the Appellant to show the effect of the disability on his earning capacity, apart from the Appellant's testimony that movement of his left hand is restricted on account of disability coupled with the fact that the disability certificate was not challenged in cross-examination. The Appellant was in private employment and continues to be so. In the circumstances, I would take the loss of earning capacity on account of disability to be only 5% as against permanent disability of 10%. The Appellant would be

entitled to an addition of 30% on account of inflation in view of the judgment of the Supreme Court in *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559, relied on and discussed by this Court in *Rakhi v. Satish Kumar & Ors.* (MAC. APP. 390/2011) decided on 16.07.2012. Loss of earning capacity thus comes to ₹45,170/- (₹41,250/- - 372/- (Income Tax) x 17 x 5% + 30%) as against the sum of ₹18,576/- awarded by the Claims Tribunal.

LOSS OF LEAVE:

7. It is borne out from the record that after the accident the Appellant was removed to Dr. R.M.L. Hospital. He was discharged from the Hospital after three days. He was discharged from the Safdarjang Hospital after the surgery and plaster of his left hand. After two weeks of removal of the plaster, Dr. A.C. Malik advised to remove the affected finger to avoid any future infection. The Appellant was operated upon in Safdarjang Hospital on 24.08.1991. In view of this, it would be reasonable to hold that the Appellant must not have been able to attend to his work for a period of about two months. He is, therefore, entitled to a compensation of ₹41,000 x 2 ÷ 12 (₹6850/- rounded off) on account of loss of leave.
8. Keeping in view the circumstances detailed above, the compensation on account of disfigurement and loss of amenities (₹10,000/- + ₹5,000/-) is enhanced to ₹20,000/-. The compensation towards pain and suffering is enhanced from ₹15,000/- to ₹25,000/- and towards conveyance and

special diet is enhanced from a lumpsum amount of ₹5,000/- to ₹5,000/- each. The overall compensation is recomputed as under:

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Pain and Suffering	₹15,000/-	₹25,000/-
2.	Medicines & Medical Treatment	₹ 5,700/-	₹ 5,700/-
3.	Conveyance and Special Diet	₹ 5,000/-	₹10,000/- (₹5,000/- + ₹5000/-)
4.	Loss of Earning Capacity	₹ 18,576/-	₹45,170/-
5.	Loss of Leave	-	₹6,850/-
6.	Permanent Disfigurement Loss of Enjoyment and Amenities of Life	₹ 10,000/- ₹ 5,000/-	₹ 20,000/-
	Total	₹ 59,276/-	₹ 1,12,720/-

9. The enhanced compensation of ₹53,444/- shall carry interest @ 7.5% per annum from the date of the filing of the Petition till its payment.

10. The Respondent No.2 New India Assurance Company Ltd. is directed to deposit the enhanced compensation of ₹53,444/- along with interest with the Claims Tribunal within six weeks which shall be released on deposit.
11. The Appeal is allowed in above terms.
12. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

NOVEMBER 05, 2012
pst