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

% *Judgment delivered on: 22nd October, 2013*

+ MAC.APP. 703/2006

RAJESH KUMAR

..... Appellant

Represented by: Mr. Navneet Goyal, Adv.

Versus

MS. SUDERSHAN BHALLA & ANR.

..... Respondents

Represented by: None

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. None has been appearing on behalf of the respondents for the last two consecutive dates. Same is the position today. Therefore, this Court has no option but to proceed with the matter.

2. Instant appeal has been preferred against the award dated 24.05.2006, whereby Id. Tribunal has granted compensation for a sum of Rs.4,29,520/- with interest @ 6% for a period of three years and also granted future interest @ 6% till realization.

3. The present appeal has been preferred for enhancement of the aforesaid compensation amount on the ground that the Ld. Tribunal has not considered the salary of the injured/appellant as he was working with Ms. Falcon Enterprises, Bhikaji Cama Place, New Delhi and was getting a salary of Rs.6,000/- per month. The salary

certificate has been placed on record as Ex. P-83, despite that Ld. Tribunal has opined that the appellant has not examined any witness from the aforesaid establishment that the appellant was getting a salary of Rs.6,000/- per month. Therefore, the Ld. Tribunal has considered his income on the basis of minimum rates of wages prevalent at the time of accident, i.e, Rs.1937/- (say Rs.1900/-).

4. On this issue though the appellant has placed on record the salary certificate, as noted above, but that certificate has not been proved by any of the witnesses examined by the appellant. Therefore, I am of the considered view that the said salary certificate has not been proved by the appellant and the Ld. Tribunal has rightly considered the salary of the appellant as Rs.1937/- (rounded to Rs.1900/-) as per the minimum rates of wages prevalent at that time.

5. The second ground argued by the counsel for the appellant is that the appellant suffered the following injuries in the accident:-

1. Left hip bone fracture.
2. Fracture on left leg below knee.
3. Fracture on left hand.
4. Injuries on left hand and right knee.
5. Injuries on right foot ankle.
6. Injuries on back of shoulder on both arms.
7. Scratches on right leg.

6. Learned counsel submits that the negligence of the driver of the offending vehicle has been proved and it is opined by the Ld. Tribunal

that the appellant received injuries in the accident due to the negligence of the driver of the offending vehicle.

7. Dr. Pradeep Sharma (PW2), Orthopaedic Surgeon at Holy Family Hospital has testified that he examined the appellant on 01.08.98 and found that he had a fracture of left leg bone and fracture of left hip. The appellant was operated upon by him on 03.08.98 with interlocking nailing of left tibia and screw fixation of left hip. Initially the appellant was admitted for the period from 01.08.98 to 10.08.98. The said Doctor proved the discharge summary Ex. PW2/37. He further stated that the appellant was again admitted in Holy Family Hospital on 06.01.99 for the removal of screw from the left tibia and was discharged on 07.01.99. The discharge summary is Ex. PW2/38. He further testified that the complication was developed in his left hip in the form of a vascular necrosis, therefore, he was admitted in the hospital on 27.09.2000. Left hip replacement surgery was performed and thereafter he was discharged on 03.10.2000. The discharge summary is Ex. PW2/39. The said witness proved the certificates Ex. PW2/40 and PW2/41 issued by him and the medical bills Ex. PW2/1 to Ex. PW2/36.

8. It is important to note that Dr. Amit Manchanda (PW8) who is a Physiotherapist and treated the appellant has proved the bills Ex. PW8/1 to Ex. PW8/6.

9. Counsel appearing on behalf of the appellant submits that the bills produced by the appellant has been considered; and awarded compensation towards medical bills by the Tribunal. However, he is

challenging that due to the injuries, mentioned above, the appellant has received 30% disability which has been proved by the disability certificate Ex. P1, however, Ld. Tribunal has considered the disability at 20%.

10. He further submits that the appellant was working as a Courier Collector in the aforesaid firm and after receiving the disability he would not be able to work comfortably and satisfactorily.

11. Keeping in view the injuries, as noted above and the nature of the avocation he was involved, the Ld. Tribunal ought to have considered his functional disability as 30% as has been proved by the disability certificate Ex. P1.

12. I note, the Tribunal has not given any reason for considering his functional disability at 20% whereas as per the disability certificate Ex. P1, the disability is 30%. Even on considering the appellant as a labourer, he requires healthy and fit body to do the work. With this disability, he would not be able to work properly and earn accordingly. He will continue to lose his earning. Accordingly, the same is granted in his favour.

13. The next ground argued by the counsel for the appellant is that the appellant at the time of the accident was 32 years old and despite that the Ld. Tribunal has failed to consider the future prospect keeping in view the disability.

14. The issue regarding the future prospects has been decided by the Apex Court in the case of ***Rajesh and Ors. Vs. Rajbir Singh and***

Ors. 2013 (6) SCALE 563 and this court has followed in the case of ***ICICI Lombard Gen. Ins. Co. ltd. v. Angrez Singh & Ors.*** in ***MAC.846/2011***. Therefore, this issue is no more *res integra*. Therefore, I award 50% towards future prospects in favour of the appellant. Accordingly, the loss on account of disability comes to Rs.1,74,420/-.

15. Though the counsel for the appellant has argued that the Ld. Tribunal has granted towards non-pecuniary damages on a very lower side, however, I note that the Tribunal has granted Rs.10,000/- for special diet and Rs.10,000/- for conveyance and further granted Rs.50,000/- towards pain and suffering. I do not find any discrepancy in the compensation amount granted towards the heads noted above.

16. However, the Ld. Tribunal has failed to grant any compensation towards loss of amenity. Therefore, keeping in view the injuries received by the appellant, I grant a sum of Rs.50,000/- towards loss of amenities. Thus, the enhanced compensation amount comes to Rs.1,46,900/- [(Rs.1,74,420 – Rs.77,520)+ Rs.50,000].

17. The appellant is entitled to get the enhanced compensation amount of Rs.1,46,900/- along with interest @ 6% for three years prior to the date of filing of the appeal. Appellant is also entitled for 6% interest for the enhanced amount from the date of filing of the appeal till realization.

18. Accordingly, the present appeal is allowed on above terms.

19. The respondent no.2 is directed to deposit the enhanced amount along with interest with the Registrar General of this Court within four weeks from today. On deposit of the aforesaid amount, the Registrar General is directed to release the said amount in favour of the appellant on taking necessary steps.

SURESH KAIT, J

OCTOBER 22, 2013

RS/jg