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

% *Judgment delivered on: 3rd December, 2013*

+ **MAC.APP. No.604/2011**

MIRAJUDDIN Appellant
Represented by: Mr. Sanjay Luthra and Mr.M.S.
Aggarwal, Advocates.

Versus

SHONKI RAM & ORS. Respondents
Represented by: Mr. A.K.Soni, Advocate for
Respondent No.3/Insurance
Company.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. The appellant has assailed the impugned award dated 16.03.2011, whereby the learned Tribunal has granted compensation for a sum of Rs.10,23,896/- with interest at the rate of 7.5% *per annum* from the date of filing of the petition till realization.

2. Instant appeal has been filed for enhancement of the compensation amount noted above.

3. Learned counsel appearing on behalf of the appellant has argued that though the appellant/injured was in the printing business, but he could not prove his income, therefore, the learned Tribunal has assessed the income

of the appellant/injured as Rs.3,953/- per month on the basis of the minimum wages applicable to an unskilled person at the relevant time. However, the learned Tribunal has not added any amount towards future prospects.

4. To support his submissions he has relied upon a case of **Rajesh and Ors. Vs. Rajbir Singh and Ors. 2013 (6) SCALE 563**, wherein the Supreme Court has held as under:-

*“11. Since, the Court in **Santosh Devi's case** (supra) actually intended to follow the principle in the case of salaried persons as laid in **Sarla Verma's case** (supra) and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.*

*12. In **Sarla Verma's case** (supra), it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter.”*

5. He submitted that keeping in view the dictum of ***Rajesh & Ors.*** (*supra*), age of the appellant/injured as 42 years at the time of accident and that he suffered 85% disability qua both the lower limbs, the learned Tribunal ought to have granted 30% towards future prospects.

6. Secondly, learned counsel has argued that as per the disability certificate Ex.PW6/A, permanent disability has been assessed by the Disability Board as 85% in relation to both the lower limbs of the appellant/injured.

7. On disability, PW6, Arun Yadav, Senior Orthopaedic Surgeon, Hindu Rao Hospital, signatory of the disability certificate Ex.PW6/A, has deposed that the appellant/injured cannot perform his normal activities which he used to perform before the accident. He had suffered fracture pelvic, fracture neck femur right bone and fracture of 2nd, 3rd and 4th proximal phalanx. Pelvic external fixator in situ DHS fixation and debridement of right side was carried out. He has difficulty in standing, walking with bleeding and pain and he was advised wheel chair mobilization, non weight bearing standing with walker and high protein diabetic diet.

8. Learned counsel further submitted that keeping in view the injury suffered by the appellant/injured, he is not able to do his printing business as he was doing earlier before the accident.

9. To strengthen his arguments, he has relied upon a case of ***Pradeep Kumar Vs. National Insurance Co. Limited & Ors., I (2009) ACC 201***, decided by this Court, wherein it is held that the disability certificate on

record shows that appellant suffered 89% permanent disability due to the accident and accordingly, the learned Tribunal has rightly taken the permanent disability as 89% (rounded off to 90% for the purpose of calculations).

10. Learned counsel submitted that the present case is of similar nature, therefore, the learned Tribunal ought to have considered the permanent disability as 85% as assessed by the Disability Board.

11. Lastly, he argued that the accident took place on 01.11.2009, claim petition was filed on 03.02.2010 and the impugned award was passed by the learned Tribunal vide order dated 16.03.2011, despite that the learned Tribunal has granted interest at the rate of 7.5% *per annum*, which is on lower side.

12. On the other hand, Mr.A.K. Soni, learned counsel appearing on behalf of the respondent No.3/Insurance Company has submitted that the appellant was not in a permanent job; therefore, the learned Tribunal has rightly not granted any amount towards future prospects in view of the dictum of ***Sarla Verma Vs. DTC and Ors. 2009 (6) SCC 121***, which has been further affirmed by the Full Bench of the Apex Court in the case of ***Reshma Kumari & Ors. Vs. Madan Mohan & Anr. 2013(5) SCALE 160***.

13. He further submitted that minimum wages requires revision after every six months, therefore, if the monthly income is assessed on the basis of the Minimum Wages Act, then there is no requirement of granting any future prospects.

14. As regards the issue of disability is concerned, learned counsel submitted that the Disability Board has considered the disability qua both the lower limbs of the appellant/injured as 85% and if it is presumed that the appellant/injured was in the printing business, then keeping in view his avocation, the learned Tribunal has rightly assessed functional disability as 75%.

15. So far as the rate of interest, i.e., 7.5 % *per annum* granted by the learned Tribunal is concerned, learned counsel submitted that the same was equivalent to the rate of interest being given on fixed deposits by the Banks. Therefore, on this issue the appellant has no case.

16. As regards the issue of future prospects is concerned, this issue is no more *res integra* as already been decided by the Apex Court in the case of **Rajesh & Ors.** (*supra*) which has been constantly followed by this Court, especially in the case of **ICICI Lombard General Insurance. Co. Ltd. Vs. Angrez Singh in MAC.A. 846/2011** decided on 30.09.2013.

17. Therefore, keeping in view the dictum of **Rajesh & Ors.** (*supra*), subsequent view taken by this Court in **Angrez Singh** (*supra*) and considering the age of the deceased as 42 years at the time of accident, 30% of the income of the appellant/injured is granted towards future prospects.

18. So far as the issue of disability is concerned, the appellant/injured has failed to prove that he was doing the printing business; therefore, the learned Tribunal has rightly assessed his monthly income on the basis of the minimum wages applicable to an unskilled person at the prevalent

time. However, if it is presumed that the appellant/injured was in the printing business, then with the disability suffered by him in both the lower limbs, it is true that he is not able to do his job effectively, but certainly, he can do some other work relating to the printing or other business. Therefore, I do not find any discrepancy in the impugned order dated 16.03.2011 qua the disability taken as 75% by the learned Tribunal.

19. As regards the issue of rate of interest is concerned, I am of the considered view that the learned Tribunal has granted interest at the rate of 7.5% *per annum* from the date of filing of the claim petition, i.e., 03.02.2010 till realization which is just and fair. Therefore, I do not find any discrepancy in awarding the rate of interest noted above.

20. Keeping in view the discussion in Para 16 and 17 above, the monthly income comes to Rs.5,138.9/-, therefore, the compensation on account of loss of income is enhanced to Rs.30,833.4 (Rs.5,138.9 x 6)] from Rs.23,718/- and towards loss of income due to disability is enhanced to Rs.6,47,501.4 (5138.9 x 12 x 14 x 75/100) from Rs.4,98,078/-.

21. Consequently, the total enhanced compensation comes to Rs.1,56,538.8 [Rs.7,115.4 (Rs.30,833.4 - Rs.23,718) + Rs.1,49,423.4 (Rs.6,47,501.4 - Rs.4,98,078/-)], which is rounded off to Rs.1,56,600/-

22. The enhanced compensation shall also carry interest @ 7.5% from the date of the filing of the petition till realization.

23. In view of the above, instant appeal is allowed.

24. Consequently, respondent No. 3/Insurance Company is directed to deposit the enhanced compensation amount with interest within five weeks

from today with Registrar General of this Court, failing which appellant shall be entitled for interest @ 12% on delayed payment

25. On deposit, the Registrar General shall release the said amount in favour of the appellant in terms of the order passed by the learned Tribunal.

SURESH KAIT, J.

DECEMBER 03, 2013

Sb/jg