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

Date of decision 18.09.2014

+ MAC.APP. 220/2007

G.S.BHANDARI

Through

..... Appellant
Mr.Parajay Chopra, Advocate with
the appellant-in-person.

versus

NIRMAL SINGH & ORS

Through

..... Respondents
Mr. Kanwal Chaudhary, Advocate for
R-3.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. The present appeal is filed seeking to impugn the Award dated 17.09.2005 by the claimant seeking enhancement of compensation.
2. The brief facts are that the appellant/claimant who was then a Major in the Army on 09.12.1995 at 8.00 AM in full military uniform was going on his motorcycle from his residence to his office at Air Defence Missile Regiment, Delhi Cantt. Near Cariappa Vihar he was hit by a bus said to be driven rashly and negligently by respondent No.1. He suffered 20% permanent disability.
3. Based on the evidence the Tribunal concluded that the accident was caused due to the negligence of respondent No.1. On compensation the Tribunal awarded a total compensation of Rs.1,80,000/-. The Tribunal noted that on account of disability there was no loss of income to the appellant as he continued to work in the Army. However, the Tribunal awarded a sum of Rs.1,50,000/- for loss on account of disability; a sum of Rs.20,000/- was

awarded for pain and sufferings, a sum of Rs.5,000/- for conveyance and Rs.5,000/- for special diet.

4. Learned counsel appearing for the appellant duly supported by the appellant who has argued the appeal in part himself has strenuously urged that the compensation provided is grossly inadequate. It is urged that the appellant was a highly decorated soldier prior to the accident and on account of the accident his medical category has been downgraded and he has lost many career opportunities. He has missed promotions to the ranks of Brigadier and Major General.

5. The appellant has urged that he passed out from Indian Military Academy in 1985 and was commissioned in the same year. He submits that he had a bright future in the Army but on account of the accident he could not undergo training at staff college due to low medical category. He further submitted that he was selected to go abroad for training on Practicable Control Radar Reporter in Holland but his name was deleted from the selected list on account of his low medical category. It is further urged that he received the Vishishth Seva medal from the Commandant for merit and distinguished service, he participated in operation 'Vijay' (Kargil War) and was awarded a commendation by the General Officer Commanding-in-Chief, Northern Command. It has been strongly urged that he is presently holding the rank of Colonel but has not been given any command position on account of his low medical category and that those who are not given any command position do not qualify for higher promotions to the post of Brigadier and Major General.

6. Strong reliance is placed on the judgment of the Supreme Court in the case of *Rekha Jain vs. National Insurance Company Limited in Civil Appeal Nos.5370-5372 of 2013 dated August 01, 2013*. That was a case of a

claimant who was a celebrity in the sphere of acting and modelling and had a bright future ahead which was doomed on account of the accident. This resulted in a number of surgeries on her body. She lost the opportunity to act in the movies and TV serials and was assessed with 30% disability and 30% disfigurement of her face due to the accident. In those facts the Supreme Court assessed the functional disability as 100% and held that it is just and proper to award 50% of the annual income for the purpose of computation of future loss of income keeping in view the fact that she may not be in a position to act in films, modelling etc. for rest of her life. The Supreme Court assessed loss of income at Rs.42,50,000/- and for loss of amenities, pleasure of life and her inability to attend social functions in future enhanced the compensation to Rs.10 lacs, for pain and sufferings also a sum of Rs.10 lacs was awarded. In addition a sum of Rs.17,15,726/- was awarded for medical expenses based on the medical evidence on record. Hence a total compensation of Rs,79,66,000/- was awarded to the claimant in that case

7. Learned counsel appearing for the respondent/insurance company has strenuously urged that the appellant has failed to place on record evidence to show that he would have been promoted to the rank of Brigadier or Major General. He points out that it is the aspiration and hope of every young officer serving in the Indian Army to one day attain the rank of Brigadier or Major General. It is urged that only limited number of officers attain that rank. He submits that there is no evidence on record placed by the appellant to show that he was anywhere in the zone of consideration for promotion to the said posts but lost out on the said promotions due to the accident. He submits that no compensation can be given for remote chances of promotion.

8. The Tribunal in the present case noted that since the appellant was an Army Officer his entire treatment was free of cost. The Tribunal further noted that the appellant was admitted in hospital on 8.12.1995 and was finally discharged on 8.4.1996 after a period of four months. The Tribunal also noted that the medical category of the appellant was reduced to A-2 category. It was also noted that the appellant could not be selected for the rank of Brigadier on account of his disability, he had to miss training at Staff College, he was dropped from the training on Practice and Control of Radar in Holland. The Tribunal also noted that he was awarded commendation for Operation Vijay by the GOC, Northern Command. In this background the Tribunal awarded Rs.1,50,000/- for loss on account of disability keeping in view that there was no loss of salary to the appellant.

9. We may look at the relevant evidence on record. PW-1 the appellant in his evidence on his promotion chances has said as follows:-

“I have been reduced to medical category A-2 (permanent) Certificate in this regard is Ex.PW1/3. I was a high profile officer in my batch and because of disability suffered by me I have been taken off from the trainee on practical control radar reporter in Holland. The certificate issued in this regard is Ex.PW1/4. At the time of the accident, I was eligible for staff college exam which is a carrier course for army officer. Because of the injuries suffered I could not appear in the exam. That exam can be taken only up to the age of 35 years. And I could not take that exam because of the injuries suffered in long duration of the treatment.

At the time of accident, my gross emoluments were Rs.11,000/- p.m. At present my total salary is Rs.21,000/-. Because of the disability suffered by me, I can at the most reached the rank of Col.. I would not be considered for the rank of Brig.or above. I was awarded commendation card by GOC Northern Command on 15.8.99 for my distinguishing services and devotion to duty in Operation Vijay. Certificate in this regard is Ex.PW1/5.”

10. In his cross-examination he states as follows:-

“...It is correct that I did not suffer any loss in salary from the date of the accident till my recovery. It is wrong to suggest that an officer whose medical category is down graded to A-2 (permanent) can go to the rank of Brigadier/orders issued by the Army authority in this regard are Ex.PW1/6. It is wrong to suggest that I have not suffered 20% permanent disability.”

11. PW-1/6 which according to the appellant in his evidence are instructions or orders issued by the Army Authority states that officers under low medical record are eligible for promotion upto the rank of Colonel only.

12. PW1/4 is an order stating that the applicant is taken off from course on account of his low medical category pertaining to training on practice Control of Radar Reporter in Holland.

13. PW-3 Lt.(Dr.) Indrani Sikdar, Base Hospital, Delhi Cantt. in her evidence said as follows:-

“I have brought the record of the then Major G.S.Bhandari. I have medically examined him when he was met with an accident on 9.12.1995. Thereafter, he was operated on 27.12.1995. During operation a K-nail was put along with circumfencial wiring in the right femur. He is in permanent disability category A-2 and granted 20% permanent disability. He is not fit for active field service. The original disability certificate is Ext.PW3/1.”

14. Despite opportunity, she was not cross-examined.

15. General principles relating to compensation in injury cases were elaborated by the Supreme Court in the case of ***Raj Kumar vs. Ajay Kumar and Anr., (2011) 1 SCC 343, ACJ 2011 (Volume I)*** in paragraph 4. Relevant portion of which reads as follows:-

“4. 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 inability 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.”

16. I may now look at some of the judgments passed on somewhat similar facts by the other High Courts and the Delhi High Court. The Himachal Pradesh High Court passed a judgment in the case of ***Major Vivek Gupta vs. Smt.Parvati Devi and Ors., MANU/HP/2072/2011.*** In that case the accident took place in the year 2000. The claimant had urged that the nature of his injuries had totally ruined his career and he is unable to be promoted to other ranks. At the time of the accident he was undergoing an advance course at the Infantry School, Mhow. It was urged that he was to be assigned duties not involving strenuous exertions and that his future promotions had been affected and in future he will no longer to be promoted to a rank higher than of a colonel and above. In those facts the H.P.High Court held that the petitioner is debarred from future promotions and as compensation for loss of future service, career and promotional avenues, an amount of Rs.5 lacs was awarded for his delayed/future promotions and inability to take up specialised courses.

17. The Shillong Bench of Gauhati High Court passed a judgment in the case of ***Maj.Shailendra Kumar Pathak vs. United India Insurance Co. Ltd. and Ors., 1996 ACJ 602; MANU/GH/0082/1995***. In that case the accident took place in the year 1989 and the contention was that the claimant had become permanently handicapped and being a Major in the Army he had been put in low medical category for loss of promotion up to the rank of Colonel. For his loss of earning, constraint on promotion, injuries and agony, the High Court awarded Rs.2 lacs by way of compensation.

18. The Jammu and Kashmir High Court passed a judgment in the case of ***Ashwani Kumar Munshi vs. Mehraj-ud-din Mandoo and Ors., 2011 ACJ 572, MANU/JK/0152/2009***. That was a case in which the claimant was working as a Major in the Army at the time of the accident. The claimant was considered for promotion by the Selection Board to the rank of Lt.Colonel but his name was withdrawn due to the reason that he had fallen in the medical category. In that case also the claimant who was 38 years of age, had averred that he was likely to retire as a Brigadier in the Army and his chances for promotion have been ruined on account of the medical category being downgraded. The High Court awarded a compensation of Rs.2,40,000/- on account of future loss of income in addition to the income already awarded by the Tribunal. The High Court had assessed the future loss of income as Rs.2,000/- per month and had taken a multiplier of 10 to award the sum of Rs.2,40,000/-.

19. There are two judgments of this High Court in somewhat similar facts. One is ***Major Benjamin Chacko vs. Maha Singh and Ors., I(1987) ACC 110; MANU/DE/0514/1986***. That was a case where the accident took place in 1972. The claimant was a Major in the Army at the time of the accident. The claimant had been promoted as a Lt.Colonel and was selected

for promotion to the post of Brigadier but was not actually promoted because of medical unfitness. This Court awarded an additional sum of Rs.1 lac towards compensation. Another judgment of this Court is ***Maj.(now Col.Retd.)Dushyant Lal Kapoor vs. Lt.N.K.Kohli and Ors., MANU/DE/3884/2009***. That was an accident that took place in 1979. It was averred that the claimant had become permanently handicapped and his promotion chances to the post of Lt. Col.had got ruined and delayed. In view of the same this Court awarded Rs.30,000/- for loss of future promotions.

20. This Court in MAC.APP.No.599/2013 titled Vikas Kumar vs. Sunit Kumar vide a recent order dated 27.08.2014 in the case of a Delhi Police Constable where also the claimant had received no loss of pay, awarded compensation to the tune of Rs.6,54,000/- on account of loss of promotions. In the said case this Court relied upon the judgment of the Punjab and Haryana High Court in the case of ***National Insurance Co.Ltd. vs. Rajbir Singh and others, 2012 ACJ 1826*** and another judgment of the Delhi High Court in the case of ***National Insurance Co.Ltd. vs. Harbans Singh & Ors.*** delivered on 28.3.2014 in the MAC APP.394/2011. This court took judicial notice of the fact that given the physical condition of the claimant in that case the chances of promotion in Delhi Police are quite remote.

21. It is true that no personnel from the Army headquarters was summoned to elaborate on the effect of his disability on the promotion chances of the appellant. However, judicial notice can be taken of the fact that those in the Army who are having low medical category would not be considered fit for operational duties/active field duties and chances for promotion would also suffer.

22. In the facts and circumstances of this case, it is apparent that the

appellant is likely to be denied promotions to the rank of Brigadier or Major General. There is no evidence on record to show to the contrary. In the light of these facts one cannot be oblivious of the fact that in a career in the Army the promotion to the high rank is extremely dear to those who don the uniform. The loss of promotion not only resulted in monetary loss, but also loss of prestige and self esteem. Given this background the award of compensation of Rs.1,50,000/- by the Tribunal for loss on account of disability appears to be quite inadequate. In my view keeping in view the fact that the accident took place in 1995 it will be appropriate to enhance this compensation to Rs.8 lacs.

23. Coming to the Award of pain and sufferings the Tribunal awarded Rs.20,000/-. It is on record that the appellant has suffered 20% disability. He has remained in hospital for full four months from 08.12.1995 to 08.04.1996. He underwent surgery on 29.12.1995. As per the appellant he has undergone physiotherapy for a total period of one year. In his evidence he said as follows:-

“The driver fled from the spot leaving the bus there. I was removed to Base hospital. I was not operated immediately as there was lot of abrasions on my right leg. On 29.12.95 I was operated upon nailing and wiring was made to be done in a major operation. I remained admitted in hospital till 8.4.96. Then I was given sick leave for 8 weeks. During the period of sick leave for 2 months, I used to walk on four crèches, thereafter I joined my duties, but I had to walk with the help of crèches upto December 1996. Thereafter for about a year, I walk with the help of one stick.

“Because of the injuries suffered, my right leg has shortened by about 2 mm. I cannot walk straight and have to limp. I have suffered 20% disability. The latest disability certificate issued by the Doctor dated 16.4.2001 copy of which is Ex.PW1/1. The disability is permanent and medical certificate issued by Col.Dr.M.K.Bhargava is Ex.1/2.

24. Keeping in view these facts and keeping in view the judgment of the

Supreme Court in *Kavita vs. Deepak & Ors.*, (2012) 8 SCC 604, I award a sum of Rs.1 lac to the appellant on account of pain and sufferings.

25. Total compensation hence now comes to Rs.9,10,000/-. The break up is as follows:-

a) Compensation for disability including Loss of promotion chances	Rs.8,00,000/-
(b) Pain and sufferings	Rs.1,00,000/-
(c) Conveyance	Rs.5,000/-
(d)Special Diet	Rs.5,000/-
Total	Rs.9,10,000/-

26. The Insurance Company/R-3 may deposit the additional amount alongwith interest @ 6.5% per annum from the date of institution of the claim petition till deposit in Court within six weeks. The amount may be released by the Registrar General on receipt from the Insurance company to the appellant.

27. Appeal is disposed of.

JAYANT NATH, J

SEPTEMBER 18, 2014

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