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

% Judgment reserved on : 05.08.2014
Judgment pronounced on : 15.10.2014

+ **MAC.APP. 179/2008**

VED KUMAR CHOPRA Appellant
Through Mr.Rajesh Yadav, Advocate

versus

NATIONAL INSURANCE CO.LTD. &ORS..... Respondent
Through Mr.Pradeep Gaur, Advocate for R-1

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. The present appeal is filed by the claimant under Section 173 of the Motor Vehicles Act, 1988 claiming enhancement of compensation awarded as per award dated 26.11.2007. Respondent No.1 Insurance Company had also filed an appeal MAC.APP.92/2008. These two appeals were heard together. MAC.APP.92/2008 was limited only to the issue of recovery rights against the driver and owner of the offending vehicle and was dismissed by this court vide judgment dated 24.09.2014.

2. The brief facts already elaborated in the judgment dated 24.09.2014 read as follows:-

“2. The brief facts are that on 07.12.1995 at about 10.15 am, the claimant alongwith other occupants was going on a jeep on Bombay Agra Road. On the way from Bombay to Nasik when the jeep reached Cherpole it was hit by a truck coming from the opposite direction driven in a high speed and in a rash and

negligent manner. The truck hit the front right side of the jeep and then dragged the jeep to some distance. The claimant sustained multiple grievous injuries.

3. On compensation the Tribunal awarded the following compensation:-

“Nature of injuries and reimbursement of medical bills	:	Rs.81,652/-
Pain and sufferings	:	Rs.40,000/-
Amenities of life	:	Rs.10,000/-
Permanent Disability	:	Rs.1,94,227/-
<u>Conveyance and special diet</u>	:	<u>Rs.10,000/-</u>
<u>Total</u>	:	<u>Rs.3,35,879/-”</u>

3. Learned counsel appearing for the appellant in the present appeal has made various submissions to contend that the compensation awarded is inadequate and contrary to the various principles laid down by this court and the Hon’ble Supreme Court. He submits that the appellant was hospitalised for a long period and had undergone a lot of pain and sufferings. He submits that despite that, still only Rs.40,000/- have been awarded for pain and suffering by the Tribunal which is on the lower side. He secondly submits that for loss of amenities of life only Rs.10,000/- has been awarded which is also on the lower side. He thirdly submits that leave of encashment of 157 days has been disallowed as according to the Tribunal there was no evidence on record. He submits that the evidence is there of PW-1, Sh.Ved Kumar Chopra which was wrongly ignored. He next submits that the Tribunal has wrongly applied a multiplier pertaining to Second Schedule of the M.V.Act. While computing loss of income due to the permanent disability actually the multiplier to be adopted was 11 as held out by the judgment of the Supreme Court in the case of *Sarla Verma vs. DTC & Anr., (2009) 6 SCC 121*. He lastly submits that the appellant on the date of the accident was 55

years of age and despite having a bright future ahead, he had been denied while computing loss of income any increase on account of future prospects.

4. I will first deal with the two submissions pertaining to calculation of compensation due to wrong multiplier and future prospects. A perusal of the Award shows that the Tribunal noted that disability certificate Ex.PW-1/6 shows that the appellant had suffered permanent disability to the extent of 30%. Based on this the Tribunal has assessed the functional disability at 15%. The Tribunal noted that the claimant was 55 years of age but as the appellant was working as a Manager with Bank of India, Panchsheel Marg, Delhi it noted that there is no evidence on record to establish that there is any effect on the job of the appellant. In view of the testimony of the appellant that he intends to start a consultancy services in finance after his retirement, the Tribunal noted that he would be entitled to compensation under this head of loss of income. Based on this the Tribunal used the multiplier of 8 given as per Second Schedule of the M.V.Act. The appellant was earning Rs.13,488/- at the time of accident. Based on the same, using a multiplier of '8' and based on a disability of 15%, the Tribunal awarded loss of income due to permanent disability at Rs.1,94,227/-.

5. As far as the multiplier is concerned, it is true that as per the judgment in the case of *Sarla Verma vs. DTC & Anr.,(supra)* in a petition under Section 166 read with 140 of the M.V.Act, the multiplier as stated by the said judgment is being applied by all the tribunals. There is no reason for the Tribunal to use the multiplier as stipulated under Second Schedule of the M.V.Act which pertains to a claim petition under Section 163 A of the M.V.Act.

6. Accordingly, as per the judgment of *Sarla Verma vs. DTC & Anr.,(supra)* and keeping in mind the age of the claimant/appellant was 55

years, the proper multiplier would be '11'.

7. As far as future prospects are concerned, I can take judicial note of the fact that minimum wages for a graduate in 2002 were Rs.3439.7 P.M. and in 2012 were Rs.9282 P.M. It is obvious that the prescribed minimum wages have more than doubled in ten years.

8. In case of *Rajesh & Ors. vs. Rajbir Singh & Ors.*, (2013) 9 SCC 54, the Supreme Court held that in the case of self employed or those on fixed wages, the assessed income should be increased by 15% for those between the age bracket of 50-60 for the purpose of computing loss of future earnings.

9. In the case of *Smt.Savita vs. Bindar Singh & Ors.*, (2014) 4 SCC 505, the Supreme Court was of the view that in the case of self employed or those engaged on fixed wages, 30% increase in income over period of time would be appropriate. In the case of *V.Mekala vs. M.Malathi & Anr.*, 2014 ACJ 1441, the Supreme Court in the case of a student who was studying in Class XI aged 16 years had awarded 50% increase for future prospects.

10. Accordingly in view of the judgment of the Supreme Court in the case of *Rajesh & Ors. vs. Rajbir Singh & Ors.* (*supra*), keeping into account the age of the appellant, he would be entitled to 15% increase in future prospects. This would be just and fair.

11. The third aspect on which submissions have been made relates to non grant of 157 days leave encashment. As per the Award, the Tribunal noted that there is no evidence on record to show that any previous leave of the appellant was deducted from his leave encashment.

12. The affidavit of PW-1/the appellant by way of evidence does not state anything about his non-encashment of leave. But in his cross-examination, he contends that he is entitled to 240 days of leave at the end

of the service and that PL of 157 was deducted from his leave encashment period.

13. PW-2, Sh. M.L.Dass, Officer from the Bank of India in his evidence has said as follows:-

“...On 17.12.1995 Mr.Chopra had met with a road accident on 7.12.1995. He remained on leave in the year 1995 for 50 days. In 1996 he remained on leave for a period 298 days, 1997 for 32 days and in the year 1998 for 160 days, in the year 1999 he was on leave for 70 days and in the year 2000 he was on leave for 50 days and in the year 2001 for 91 days. The employee had submitted application for leave as and when he availed the same. I have brought the record. However, for giving details I have to arrange in sequence, since it is voluminous...”

14. Then on the next date he has said as follows:-

“... He met with a road accident on 7.12.1995. At the time of retirement his salary was Rs.21,143.16/-. In the year 1995 he remained on leave for 50 days. In 1996 he remained on leave for a period of 298 days and in the year 1997 for 32 days and in the year 1998 for 160 days. In the year 1999 he was on leave for 70 days and in the year 2000 he was on leave for 50 days and in the year 2001 for 91 days....”

15. The evidence above indicates that the claimant has taken leave of 751 days. However, the accident has taken place on 07.12.1995. In 1995 he remained on leave only for 50 days, in 1996 he has remained on leave for 298 days. Thereafter he had remained on leave in 1997, 1998, etc. till 2001. The only period which is proximate to the accident is the year 1995 and 1996. As to how the other leaves are connected with the accident is not known or explained. There is nothing to show that the appellant could not encash leave of 157 days as claimed. The evidence on this count is sketchy and unreliable. Only the appellant in his cross-examination claims to have a loss of leave encashment of 157 days. This bald averment cannot be

accepted.

16. In fact the Tribunal rejecting the contention of the claimant held as follows:-

“Though the petitioner in his cross examination has testified that the privilege of 157 days in deducted from his leave encashment period, no evidence has been produced to establish the same. As per the evidence on record, the petitioner remained under treatment upto March, 98. From the leave record which is collectively Ex.PW2/8 it is established that in 1994 the petitioner had availed privilege leave for two days, one in the month of October and one in the month of November. Both the privilege leaves thus were taken before the accident. In 1996 though the petitioner had taken the sick leaves for 296 days, no privilege leave was taken by him. In the year 1997, the petitioner had taken the privilege leave for 22 days in the month of February, 21 in the month of March and 11 days in the month April. Though there is evidence on record to establish that the said leave was taken on medical ground on the advice of any doctor. Even otherwise, sick leave of 110 days was left in the account of petitioner in the year 1997. Thus he is no entitled for any encashment for the same. In the year 1998 also though the privilege leave for 64 days was availed by the petitioner, there is no evidence on record to establish that the same was availed on account of the injuries sustained by him in the accident. It is also pertinent to mention here that sick leave of 110 days was in the account of petitioner during this period also. Thus there is no evidence on record that any privilege leave of petitioner was deducted from his leave encashment period.”

17. There are no reasons to change findings recorded by the Tribunal on this issue.

18. I will now deal with the issue of non-pecuniary head of pain and suffering. The Tribunal notes that the claimant sustained grievous head injuries along with fracture of maxilla, humerus and right acetabulum along with dislocation of right hip and other wounds and abrasions all over his

body with loss of three teeth. He remained on bed rest till 26.03.1996 i.e. for nearly four months. He further remained in Mool Chand Hospital from 14.10.1996 to 27.10.1996 when a major operation of hip and cap replacement was carried out. He was again admitted to Mool Chand Hospital from 25.12.1996 till 28.12.1996. During this period there was an operation performed on his right arm. A plate was inserted in the right arm which was later removed. He was again admitted to Orthonova Hospital for three days in March, 1998. From discharge summary of Orthonova hospital, it is established that during his hospitalization open reduction and nailing was done on 09.03.1998. He had also remained in Smt. Suniti Singhania Hospital from 7.12.1995 to 16.01.1996. Thus there is sufficient evidence on record to establish that the petitioner had to undergo major surgical operations during the period of his retirement and had to face the pain and sufferings for about two and a half years.

19. In view of the above, in my opinion, keeping in view the judgments of the Supreme Court in the case of ***Rajesh & Ors. vs. Rajbir Singh & Ors.(supra)***; ***Kavita vs. Deepak and Ors., (2012) 8 SCC 604***; ***V.Mekala vs. M.Malathi & Anr., 2014 ACJ 1441*** and ***Rekha Jain vs. National Insurance Company Limited*** in Civil Appeal Nos.5370-5372 of 2013 dated August 01, 2013, the compensation for pain and suffering of Rs.40,000/- is inadequate. I increase the said amount of Rs.1,00,000/-. Compensation awarded towards amenities of life of Rs.10,000/- is also inadequate and same is increased to Rs.1,00,000/-. The total compensation now payable to the claimant is as follows:-

“Nature of injuries and reimbursement : of medical bills	Rs.81,352/-
Pain and sufferings	: Rs.1,00,000/-
Amenities of life	: Rs.1,00,000/-
Permanent Disability	: Rs.3,07,117/-

Conveyance and special diet	:	Rs.10,000/-
Total	:	Rs.5,98,769/-”

20. The additional amount with accumulated pendente lite interest @ 7% per annum from the date of the filing of the petition till deposit be deposited within four weeks. The same may be released to the claimant as per the directions in the award by the Registrar General.

21. The appeal stands disposed of.

JAYANT NATH, J

OCTOBER 15, 2014

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