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

+ MAC.APP. 378/2013

% Date of decision: 08th May, 2014

RAJ KUMAR Appellant

Through: Mr.S.N.Parashar, Adv.

versus

JEET SINGH & ORS. Respondents

Through: Mr.L.K.Tyagi, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE DEEPA SHARMA

JUDGMENT (ORAL)

1. The appellant met with an accident on 20.10.2008, while riding on his motorcycle and reached at Pashu Chikitsalaya Bhojpura, when a Tata Truck No.HR 38C-2777 being driven in rash and negligent manner and at very high speed hit his motorcycle. He suffered grievous injuries and was initially treated at Guru Tek Bahadur hospital and then referred to Trauma Centre, Delhi. He was admitted in Max Balaji Hospital on 21.10.2008 and was discharged from there on 30.10.2008. He suffered with (i) Crushed Mangled left leg – Circumferential loss of skin and crushing of muscles from knee to ankle. (ii) Compound fracture

BB right leg (MID 1/3) (iii) Lacerated wounds with skin loss right elbow and forearm (iv) Fracture nasal bone and was operated upon. Post operation he developed necrosis of bone and muscles with derangement of coagulation profile and sepsis hence AK amputation was done.

2. The appellant has filed his compensation claim vide MAC no.602/2010. He suffered permanent disability of 80% in respect of his lower limbs as per the disability certificated issued by GTB hospital. The Tribunal assessed his whole body disability at 40% and calculated the loss of future earning after taking into consideration his age as well three income tax returns of the assessment year 2007-08, 2008-09 and 2009-10 and awarded the compensation as under vide order dated 15.10.2012:

1.	Compensation towards pain and suffering	Rs. 1,00,000/-
2.	Loss of amenities and enjoyment	Rs. 1,50,000/-
3.	Compensation towards disfiguration	Rs. 1,00,000/-
4.	Loss of earning capacity due to injuries	Rs. 9,58,997/-
5.	Loss of earning of petitioner for 5 months @ Rs.8,200/-	Rs. 41,000/-

6.	Expenses towards medical bills	Rs. 3,11,619/-
7.	Compensation towards conveyance and Special diet (without bills)	Rs. 10,000/-
8.	Compensation towards prosthetic leg	Rs. 70,000/-
	Total	<u>Rs.17,41,616/-</u>

3. Aggrieved by the said award, the present appeal has been filed wherein it has been contended that the Tribunal has wrongly calculated the annual income of the appellant. The learned Tribunal ought not to have taken into consideration the income shown in the income tax return of the assessment year 2009-10 because during the financial year 2008-09 the petitioner was indisposed due to his injuries and was not in service and that is why his income for that year has reduced. It is contended that his earlier income tax returns show that there was year wise increase in his income.

4. The respondent had denied that the tribunal has wrongly calculated the income of the appellant.

5. In the present appeal the finding of the tribunal that the accident was the result of the rash and negligent driving of the

offending vehicle no. HR 38C 2777 is not disputed. This finding has thus attained finality.

6. I have seen the lower court record. It is apparent from the record that due to this accident on 21st October, 2009 and due to the grievous injuries received by the appellant he was not able to perform his duties with his employer for 5-6 months. This fact is also clear that the learned Tribunal has compensated him for loss of earning for five months. In view of this fact naturally, his income for assessment year 2009-2010 in his income tax return is less than that of previous years and it was not to be taken into consideration while calculating his average income for the purpose of computing the future loss of income. Thus, calculating the average annual income of the appellant comes to

Income as per Income tax Returns

For the year 2007-2008	Rs.1,14,321/-
For the year 2008-2009	Rs.1,72,680/-
	Rs.2,87,001/-
Mean of two years income	Rs.2,87,001/2 = Rs.1,43,500/- (annual income)

7. It is further argued on behalf of the appellant that 30 % of his annual income has been added towards inflation/future prospects while he was entitled for addition 50% of his income while calculating his loss of future earnings. Reliance has been placed on the judgment of Apex court in *Rajesh vs. Rajbir Singh* (2013) 9 SCC 54.

8. There is no dispute to the fact that the age of the appellant was 26 year at the time of accident and as per formula laid down in the above mentioned case law, 50% of his salary ought to have been added towards loss of future prospects while calculating his entitlement for loss of earning capacity.

The future loss of income 50% of 143500 = 71,750

Total annual income come to 143500 + 71750 = Rs.215, 250/-

9. It is also argued by appellant that the Tribunal has wrongly assessed the whole body disability as 40 % while it ought to have been 80% and has relied on the findings of case in *Neerupam Mohan Mathur vs. New India Assurance Co.* 2013 (8) SCALE.

10. It is argued on behalf of the respondent that the trial court has correctly assessed the whole body disability at 40% since the

disability of 80% suffered by the appellant does not restrict him for performing his vocation. He was only working as an accountant.

11. The question regarding assessment of future loss of earning due to permanent disability was considered by the apex court in the case *Raj Kumar vs. Ajay Kumar and others* (2011) 1 SCC 343 wherein the court has held as follows:

“8. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accident injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (“the Disabilities Act”, for short). But if any of the disabilities enumerated in Section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

9. The percentage of permanent disability is expressed by the doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an

extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body cannot obviously exceed 100%.

10. *Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.*

11. *What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation. (See*

for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. [(2010) 10 SCC 254 : (2010) 3 SCC (Cri) 1258 : (2010) 10 Scale 298] and Yadava Kumar v. National Insurance Co. Ltd. [(2010) 10 SCC 341 : (2010) 3 SCC (Cri) 1285 : (2010) 8 Scale 567])

12. Therefore, the Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence:

- (i) whether the disablement is permanent or temporary;*
- (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;*
- (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person.*

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.”

12. I have gone through the case law of *Neerupam Mohan Mathur* (supra). The facts in that case are clearly different. In that case the appellant was working as a scientist using his hands and since the court find that amputation of his hand had affected his work, his disability was accordingly judged. In the present case, the appellant was working as an accountant and thus was doing a desk job and his disability in relation to lower limb has not left him totally incapable of performing his job. In *Ajay Kumar’s* case

(supra), the court has clearly held that the assessment of compensation under the head of future earning would depend upon the effect and impact of such permanent disability on the earning capacity. This can be assessed only on appreciation of the evidence. As discussed above, the appellant was an accountant and in the facts and circumstances, the learned tribunal has rightly assessed the percentage of whole body disability of the appellant as 40%.

The total loss of future earning on account of disability = $215,250 \times 17 \text{ (multiplier)} \times 40/100 \text{ (permanent disability)} = \text{Rs.}14,63,700/-$

13. There is no challenge to the compensation awarded by the learned tribunal under other heads.

1. Loss of earning capacity due to injuries	Rs.14,63,700/-
2. Compensation towards pain and sufferings	Rs. 1,00,000/-
3. Loss of amenities and enjoyment	Rs. 1,50,000/-
4. Compensation towards disfiguration	Rs. 1,00,000/-
5. Loss of earning of petitioner for 5 months @ Rs.8,200/- p.m.	Rs. 41,000/-
6. Expenses towards medical bills	Rs. 3,11,619/-
7. Compensation towards conveyance and special diet (without bills)	Rs. 10,000/-
8. Compensation towards prosthetic leg	Rs. 70,000/-
	Rs.22,46,319/-

14. The appellant shall be entitled for the interest of @ 7.5% per

annum on the awarded amount amount from the date of filing of the petition till its realisation. The amount shall be paid within six weeks. The appellant shall be entitled for the interest @ 12% for the delayed period.

15. The appeal is disposed of in the above terms.

DEEPA SHARMA, J

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