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

% *Judgment delivered on: 04th March, 2014*

+ **MAC.APP. 957/2013**

SANTOSH @ SANTOSH SAV

..... Appellant

Represented by: Mr. Sanjeev Srivastava, Adv.

Versus

GOPAL SINGH & ORS.

..... Respondents

Represented by: Ms. Suman Bagga and
Ms. Shruti Shukla, Advs. for
R-3.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

CM APPL. 16729/2013(Delay)

In view of the averments made in the application, the delay of 293 days in filing the instant appeal is condoned.

The application stands disposed of.

+ **MAC. APP. 957/2013**

1. The present appeal is directed against the impugned award dated 04.09.2012, whereby the learned Tribunal has awarded compensation as under:

- | | | |
|-----------------------------------|---|-----|
| “1. Loss of Medical Expenses | : | NIL |
| 2. For loss of earning on account | | |

	<i>of disability</i>	:	<i>Rs. 4,56,019/-</i>
3.	<i>Pain and Suffering</i>	:	<i>Rs. 60,000/-</i>
4.	<i>Conveyance & Special Diet</i>	:	<i>Rs. 40,000/-</i>
5.	<i>Attendant Charges</i>	:	<i>Rs. 10,000/-</i>
6.	<i>Loss of Amenities</i>	:	<i>Rs. 40,000/-</i>
<i>Total</i>		:	<i>Rs. 6,06,019/-</i>
<i>(Rs. Six lacs six thousand and nineteen only.) ”</i>			

The learned Tribunal has also awarded interest @ 7.5% per annum from the date of filing the petition till realization of the amount.

2. Learned counsel appearing on behalf of the appellant submits that the injured/appellant was a rickshaw puller. On the date of accident he was 23 years old. In the accident in question, he received 40% permanent disability in relation to both the lower limbs. However, the learned Tribunal has assessed 40% functional disability and accordingly granted compensation. He submitted that the learned Tribunal failed to add any amount in his income towards future prospects.

3. To support his submissions, learned counsel has relied upon case of ***Rajesh and Ors. Vs. Rajbir Singh and Ors. 2013 (6) SCALE 563*** wherein the Full Bench of the Apex 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."*

4. Learned counsel for the appellant further submits that the learned Tribunal failed to grant compensation towards loss of disfigurement and loss of marriage prospects. He submitted that the injured became disabled at a very young age and suffered disability in both lower limbs due to which the marriage prospects have been ceased, therefore, just and fair compensation may be granted in his favour.

5. On the other hand, learned counsel appearing on behalf of respondent/Insurance Company submits that the appellant received 40% permanent disability in his both lower limbs and learned Tribunal has considered 40% functional disability qua the whole body. He was a rickshaw puller and could not prove his employment, therefore, the learned Tribunal has assessed a sum of Rs. 5,278/- as his monthly income applicable to an unskilled worker at the relevant time as per the Minimum Wages Act, 1948. Hence, the learned Tribunal has not added any amount in his actual income towards future prospects.

6. To support his submissions, learned counsel has relied upon the case of *Sarla Verma & Ors. Vs. DTC & Anr., (2009) 6 SCC121*, which has been further affirmed by *Reshma Kumari & Ors. Vs. Madan Mohan & Anr.* delivered in *Civil Appeal No. 4646 of 2009* on 02.04.2013.

7. Learned counsel for the respondent/Insurance Company further submitted that the learned Tribunal awarded Rs. 40,000/- each for conveyance and special diet and loss of amenities, Rs. 60,000/- for pain and suffering and Rs. 10,000/- for attendant charges. He submitted that the learned Tribunal has awarded just compensation, therefore, no interference is required from this Court.

8. I have heard Ld. Counsels for the parties.

9. As far as the issue of future prospects is concerned, while relying upon the case of *Rajesh & Ors. (supra)*, this issue has been considered by this Court in the case bearing MACA No.846/2011 titled as *ICICI Lombard General Insurance Co. Ltd. Vs. Angrej Singh & Ors.*, decided on 30.09.2013.

10. Therefore, keeping in view the settled position of law and that the age of the injured as 23 years on the date of accident and 40% of permanent disability in relation to both the lower limbs, I add 50% in his actual income towards the future prospects.

11. Admittedly, age of the Age of the appellant on the date of accident, i.e., 04.07.2010 was 23 years. He was a rickshaw puller and a bachelor at that time. However, no amount is granted by the learned Tribunal for loss of

disfigurement and marriage prospects.

12. Keeping in view the age of the appellant and his disability, I grant Rs.50,000/- each towards loss of disfigurement and marriage prospects.

13. In view of the above, the compensation amount comes as under:

Sl. No.	Heads of Compensation	Compensation granted by Id. Tribunal	Compensation granted by this Court
1.	Loss of Medical Expenses	NIL	NIL
2.	For loss of earning on account of disability	Rs.4,56,019/-	Rs.6,84,028.8
3.	Pain and suffering	Rs. 60,000/-	Rs. 60,000/-
4.	Conveyance & Special Diet	Rs. 40,000/-	Rs. 40,000/-
5.	Attendant Charges	Rs. 10,000/-	Rs. 10,000/-
6.	Loss of Amenities	Rs. 40,000/-	Rs. 40,000/-
7.	Loss of disfigurement	NIL	Rs.50,000/-
8.	Loss of marriage prospects	NIL	Rs.50,000/-
	TOTAL	Rs.6,06,019/-	Rs.9,34,028.8

Accordingly, the compensation is assessed as Rs.9,34,028.8/-.

14. Resultantly, an amount of Rs. 3,28,009.8 is enhanced (Rs.9,34,028.8 – Rs.6,06,019/-). The same is rounded off to Rs.3,28,010/-.

15. The enhanced compensation amount shall carry interest @ 7.5% *per annum* from the date of filing of the claim petition till its realization.

16. Accordingly, the respondent No.3 is directed to deposit the enhanced compensation amount with upto date interest accrued thereon with the

Registrar General of this Court within a period of six weeks from today, failing which, appellant/claimant shall be entitled for penal interest @ 12% *per annum* on account of delayed payment.

17. On deposit, the Registrar General is directed to release the amount in favour of the appellant/claimant.

18. In view of the above, the appeal is allowed.

SURESH KAIT, J.

MARCH 04, 2014
Cl/jg