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

Judgment delivered on: 13th May, 2014

+ **MAC.APP. 40/2012**

ANGAD KUMAR Appellant
Represented by: Mr. S.N. Parashar, Advocate.

versus

GOPAL BAHADUR & ORS. Respondent
Represented by: Mr. D.K. Sharma, Advocate.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.: (ORAL)

1. The present appeal is directed against the impugned award dated 05.09.2011 whereby learned Tribunal has awarded compensation for an amount of Rs.7,37,563/- with interest @ 7.5% per annum from the date of filing of the claim petition i.e. 01.05.2010 till realisation of the award amount.
2. Vide the present appeal, the appellant is seeking enhancement of compensation as noted above.
3. Learned counsel appearing on behalf of the appellant submits that in the accident the appellant received injury with 80% disability and the learned Tribunal has assessed the disability as 60%. Age of the injured on

the date of accident was 19 years, despite, the learned Tribunal has not added any amount in his actual income towards future prospects.

4. To strengthen the argument learned counsel has relied upon the case of ***Rajesh and Ors. Vs. Rajbir Singh and Ors. 2013 (6) SCALE 563*** wherein it has been 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. Learned counsel further submits that the appellant was a young boy of 19 years of age on the date of accident. He was working as a labourer but

due to the said disability he suffered lot of pain and remained admitted in hospital for 30 days, thus he lost the amenities of life. He has been disfigured and marriage prospects have drastically reduced.

6. Learned counsel submits that the learned Tribunal has awarded Rs.30,000/- for pain and suffering, Rs.20,000/- towards loss of amenities and Rs.80,000/- towards loss of disfigurement and marriage prospects, which is on a very lower side.

7. On the other hand learned counsel appearing on behalf of Insurance Company submits that since the appellant failed to establish the permanent employment, therefore, keeping in view the dictum of the Apex Court in *Sarla Verma Vs. DTC and Ors., 2009 (6) SCC 121* which has further been affirmed by the Full Bench of Apex Court in the case of *Reshma Kumari & Ors. Vs. Madan Mohan & Anr. in Civil Appeal No.4646 of 2009* on 02.04.2013, learned Tribunal rightly not granted compensation on account of future prospects.

8. Learned counsel for the appellant on the other hand submits that while granting non-pecuniary damages learned Tribunal has taken into account the complete facts and circumstances of the case and also the fact that he was a bachelor and survived by his parents. Therefore, the learned Tribunal has sufficiently awarded compensation towards non-pecuniary loss.

9. The issue of future prospects has been dealt with by this Court in the case of *ICICI Lombard General Insurance Co. Ltd. Vs. Angrej Singh & Ors.* while relying upon the dictum of *Rajesh & Ors. Vs. Rajbir Singh (supra)* wherein it has been held as under: -

*“27. In view of above, this court is guided by the legal principles as set out in **Reshma Kumari** and **Rajesh** in order to assess the just compensation as it is envisaged in Section 168 of Motor Vehicles Act, 1988. In **Reshma Kumari**, the Apex Court affirmed the findings of **Sarla Verma**; and in **Rajesh**, the Hon’ble Supreme Court has agreed with the dictum of **Santosh Devi**. Specifically, for the assessment of future prospects in respect of the persons falling under the category of self-employment / fixed wages this court is guided by the dictum laid down in **Rajesh**. In my considered opinion, there is no contradiction in the dictum laid down by the Apex Court in the cases of **Reshma Kumari** and **Rajesh**.”*

10. I have heard learned counsel for both the parties and perused the records.

11. Admittedly the appellant was working as a helper and claimed to be earning Rs.6,000/- per month. Since the appellant failed to prove the avocation and salary, therefore, learned Tribunal assessed his monthly income of Rs.3,953/- as per minimum wages applicable to unskilled worker.

12. Admittedly, the appellant suffered injury at the young age, which has made him disabled and he is not able to do the labour work. In the present era even a healthy person is unable get employment and the person, who is with disability of 80% which pertains to his left lower limb has very minimal chances of getting employment and that too on a very meagre salary. Due to the injury, he has suffered loss and amenities of life. It is established that he has become disabled, disfigured and thus marriage prospects has also drastically reduced.

13. Keeping in view the facts of this case and in the interest of justice, I award an amount of Rs.50,000/- towards pain and suffering and Rs.50,000/- for loss of amenities and Rs.1,00,000/- towards loss of disfigurement and marriage prospects.

14. Keeping in view the facts and circumstances of the case and the age of the appellant as 19 years at the time of his accident, I am of the considered opinion that the appellant is entitled for 50% towards future prospects. Accordingly, the compensation amount is assessed as under: -

Sl. No.	Heads of Compensation	Compensation granted by Id. Tribunal	Compensation granted by this Court
1.	On account of permanent disability	Rs.5,12,309/-	Rs.7,68,528/-
2.	Loss of income	Rs.23,718/-	Rs.23,718/-
3.	On account of medical expenses	Rs.1,536/-	Rs.1,536/-
4.	Pain and Suffering	Rs.30,000/-	Rs.50,000/-
	Loss of amenities	Rs.20,000/-	Rs.50,000/-
	Loss of disfigurement & marriage prospect	Rs.80,000/-	Rs.1,00,000/-
	Future Medical Expenses	Rs.50,000/-	Rs.50,000/-
	Special diet	Rs.10,000/-	Rs.10,000/-
	Conveyance	Rs.10,000/-	Rs.10,000/-
	TOTAL	Rs.7,37,563/-	Rs.10,63,782/-

15. Accordingly, the total compensation amount is assessed at Rs.10,63,782/-.

16. Resultantly, an amount of Rs.3,26,219/- (Rs.10,63,782 - Rs.7,37,563) is enhanced.
17. The enhanced amount shall carry interest @ 7.5% per annum from the date of filing of the claim petition till realisation of the amount.
18. The Insurance Company is directed to deposit the enhanced amount with Registrar General within six weeks from today, failing which the appellant shall be entitled for interest @ 12% per annum on delayed period.
19. On deposit, the amount shall be released in favour of appellant on taking necessary steps by him.
20. The appeal is accordingly allowed in the above terms.

SURESH KAIT, J

MAY 13, 2014

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