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

+ MAC.APP.231/2012

Judgment reserved on: 6th May, 2014

% Judgment pronounced on: 16th May, 2014

ALAM KHAN Appellant
Through : Mr.S.N.Parashar and
Ms.Monika, Adv.

versus

BALDEV SINGH & ORS. Respondents
Through : Mr.J.P.N.Shahi, Adv. for
R-3

**CORAM:
HON'BLE MS. JUSTICE DEEPA SHARMA**

JUDGMENT

1. The petitioner has assailed the award dated 22.07.2011 in petition No.621/2010, under Section 166 and 140 of Motor Vehicle Act, 1988, claiming a compensation of Rs.10 lakhs for the injuries suffered by him in the accident which had taken place on 28th July, 2006.

2. On 28th July, 2006 at about 2.30 a.m. the appellant Alam Khan along with his son Salman Khan was sitting at the bus stand

Malviya Nagar waiting for the rain to stop. One Tata Qualis no.DL Q vb 1585 came at a very high speed in a rash and negligent manner violating the traffic rules and norms, without blowing any horn, from Badarpur side and hit the appellant and his son. The appellant had received grievous injuries, multiple injuries and fracture on his legs in this accident. He was taken to AIIMS and thereafter due to RTA shifted to Safdarjang Hospital. His treatment continued till 4th April, 2008. The contention of the appellant is that he was the President of Education and Economic Development Society and was earning Rs.8,000/- per month. His age at the time of accident was 47 years and till his accident he had enjoyed good health. He lost his job due to this accident and also suffered permanent disability of 69% on both his limbs. He has also alleged that he had suffered great mental pain, agony, shock and trauma and his health has also got deteriorated. He has claimed the compensation of Rs. 10 lacs.

3. The learned tribunal, after conclusion of the trial returned the findings that the injuries had been received by the appellant due to rash and negligent driving of the vehicle no. DL Q vb 1585. The

liability to pay compensation was fixed on Insurance Company being the insurer. There is no challenge to the findings of the tribunal on this count. The findings of the tribunal that the accident is the result of rash and negligent driving of vehicle No.DL Q vb 1585 has become final.

4. Vide order dated 22nd July, 2011, the Tribunal had awarded a compensation of Rs.4,72,400/- to the appellant which included medical expenses of Rs. 95,000/-, pain and suffering and enjoyment of life of Rs. 35,000/-, special diet of Rs. 25,000/-, attendant of Rs. 15,000/-, conveyance charges of Rs. 25,000/-, loss of income of Rs. 20,000/-, loss of future income of Rs. 2,57,400/-.

5. The main contention of the appellant is that the Tribunal had wrongly resorted to adopting the minimum wages of a skilled worker for calculation of the future loss of earning and that it has also wrongly reduced its disability from 69% to 50%. It is further submitted that appellant was working as a President of the Education and Economic Society and was drawing a salary of Rs.8000/- per month and that there was no rebuttal of this fact. It is further submitted that the minimum wages of skilled worker were

Rs. 3695/- while the computation of the future loss of income has been done on wages of Rs.3271/-. The computation therefore is done wrongly.

6. The service of the respondent no.1, the owner and respondent no.2, the driver of the offending vehicle had been dispensed with vide order 2nd March, 2012 of this court as there was no breach of policy condition. The liability to pay the compensation has been fixed by the insurance company.

7. The insurance company has not disputed its liability to pay the compensation, it is however contended by the learned counsel for the insurance company that the learned trial court has rightly adopted the course of minimum wages of skilled worker while calculating the loss of future income since the appellant had failed to prove his income. It is, however, conceded that at the relevant time the minimum wages of the skilled worker were Rs.3695/-. It is also contended by the insurance company that the learned tribunal has rightly assessed the functional disability by 50% for calculating the loss of future income.

8. I have gone through the lower court record. The record

shows that the injured/appellant had failed to produce any evidence on record to prove his employment with the Education & Economic Society. The salary certificates which were produced before the Tribunal also does not show that he was in the employment of Education and Economic Society. The salary certificates or the private account certificates for the year 31.03.2006 (Ex.PW1/167), his statement of income shown in the document Ex.PW1/166 and Ex.PW1/168 and the documents Ex.PW1/169 do not support the contention of the appellant that he was working as President of the Education and Economic Society.

9. These documents tend to show him as the proprietor of STD PCO and Laboratory Work. The learned Tribunal has thus rightly disbelieved these documents and had taken recourse to the minimum wages. It is undisputed fact that minimum wages at that time were Rs.3695/- and not Rs.3271/- and the learned Tribunal ought to have done the computation on the basis of minimum wages at the rate of Rs.3695/-.

10. The next argument of the appellant Alam Khan is that he lost his job with the Education and Economic Society as a result of this

accident. None of the documents on record suggest that the appellant was in the employment of Education and Economic Society, therefore there was no question of his loosing the job with the Education and Economic Society. No document has been produced on record to prove the termination of his service by the Society. It is a settled principle of law that it is for the appellant to prove these facts by producing on record some cogent evidence.

11. The contention of the appellant is that he had suffered disability of 69% which rendered him jobless but the tribunal has wrongly assessed his disability as 50%.

12. The Hon'ble Supreme Court in the case of **(2011) 1 SCC 343** titled as ***Raj Kumar vs. Ajay Kumar and Another***, has clearly laid down the guiding principles to be reckoned while calculating the future loss of earnings due to permanent disability. The Hon'ble Court has held as under:

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.

13. *Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his*

livelihood.

19. *We may now summarise the principles discussed above:*

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).

(iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

13. It is therefore clear that the assessment of the loss of earning capacity has to be done on the basis of incapacity of the injured to perform the job in the same manner as he would have been able to perform, had he not suffered the permanent disability. Burden is

upon the injured to produce such evidence which helps the court in determining the extent of loss of use of his limbs in his capacity to earn his livelihood. The Apex court has also clearly stated that while calculating the loss of future earning, the court has to take into consideration the effect of the disabled limb on the functioning of the entire body. The injured appellant had to produce on record such evidence which could help the court to conclude that due to his permanent disability his earning capacity has been totally affected or that there is a total loss of income. In this case, the appellant had even failed to prove on record the nature of his work or vocation. According to him, he was the President of Education and Economic Society but still he had not disclosed his nature of work. He has thus failed to prove on record that this accident has made him incapable of earning any livelihood. He thus has failed to show that due to 69% of disability he has suffered 100% loss of income. In these circumstances, the tribunal has rightly calculated the said loss to the extent of 50%.

14. There is no dispute that the age of the appellant at the time of accident was 47 years. The multiplier of 12 has been correctly used

by the tribunal.

15. The appellant has also contended that the Tribunal has awarded a meagre consolidated sum of Rs.25000/- towards conveyance and special diet although he had spent a substantial amount towards his conveyance and special diet during course of his treatment and that he was admitted as an indoor patient for three times and also remained in the hospital from 11.10.2006 to 18.10.2006 and 27.11.2006 to 2.12.2006 and after his discharge he was treated as an OPD patient till 04.04.2008 as per exhibited medical record. The appellant had claimed that amount of Rs. 25,000/- be awarded towards conveyance and a sum of Rs. 25,000/- be awarded to special diet.

16. This argument is misconceived since the tribunal had already awarded a sum of Rs. 25,000/- each towards conveyance and special diet. It is noteworthy that in the petition, the appellant has claimed Rs.10,000/- towards conveyance and Rs.10,000/- towards special diet. Despite that the learned Tribunal has awarded him Rs.25,000/- each for conveyance and special diet, much more than the amount claimed by the appellant in his petition before tribunal.

The amount certainly is not meagre and is sufficient to meet the conveyance and the special diet which he must have incurred. The amount of Rs.15000/- had been awarded towards attendant charges and I am satisfied that under these circumstances the amount was appropriate. The amount of Rs. 35,000/- towards pain and suffering and loss of amenities is also sufficient and does not require any intervention by this court.

17. I, therefore, award the total compensation as under:

MEDICAL EXPENSES:	Rs. 95,000/-
PAIN AND SUFFERINGS &	
ENJOYMENT OF LIFE	Rs. 35,000/-
SPECIAL DIET	Rs. 25,000/-
ATTENDANT	Rs. 15,000/-
CONVEYANCE CHARGES	Rs. 25,000/-
LOSS OF INCOME	Rs. 20,000/-
LOSS OF FUTURE INCOME	Rs.2,88,210/- (3695/- x 12 = 44,340 x 13 x 50%) Rs.5,03,210/-

18. A sum of Rs.5,03,210/- as compensation along with interest

at the rate of Rs. 9% from the date of petition, is awarded to the appellant. The awarded amount shall be deposited by the insurance company within six weeks from today failing which they will incur an interest at the rate of Rs. 12% on expiry of stipulated period of making the payment. Out of the awarded amount, a sum of Rs. 2.5 lacs be kept in form of FDR for the period of 5 years in the name of Alam Khan in State Bank of India, Saket Branch. No loan shall be granted to him against the said FDR. He can withdraw the money from the said FDR only with the permission of the court.

19. The Insurance Company shall inform the appellant about deposit of the awarded amount so as to facilitate him to withdraw the same.

20. The appeal stands disposed of.

DEEPA SHARMA, J

MAY 16, 2014
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