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

Decided on: 03rd November, 2017

+ **MAC APPEAL 856/2011**

ANIL KUMAR CHAUHAN

..... Appellant

Through: None

versus

**NEW INDIA ASSURANCE CO. LTD.
& ORS.**

..... Respondents

Through: Mr. J.P.N. Shahi, Advocate for
R-1

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant suffered injuries in a motor vehicular accident that occurred on 04.08.2006 due to the negligent driving of a motor vehicle described as a bus bearing registration no.DL-1PA-6321 which was admittedly insured against third party risk with the first respondent (insurer). On his accident claim case (suit no.1196/2008), instituted on 02.12.2006, the Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 26.04.2011, returned a finding that the accident had occurred causing injuries to the appellant (claimant) on account of the negligent driving of the bus by the second respondent herein, it being a vehicle registered in the name of the third respondent and insured against third party risk with the first

respondent. The Tribunal awarded compensation in the total sum of Rs.6,14,800/-, calculating it thus :-

Medical Charges	Rs.91,144/-
Special diet	Rs.10,000/-
Conveyance charges	Rs.5,000/-
Loss of income	Rs.22,416/-
Prospective loss of income	Rs.3,36,240/-
Pain and suffering	Rs.50,000/-
Curtailment of enjoyment of life and general damages	Rs.1,00,000/-
Total	Rs.6,14,800/-

2. The liability to pay the above amount was fastened on the insurer.

3. It may be mentioned here that the claimant had proved during the course of evidence, his disability certificate (Ex. PW1/A) issued by a board of doctors of Guru Tegh Bahadur Hospital, Delhi confirming that he has been rendered as a case of locomotor disability, the physical impairment being 50% in relation to his whole body. The tribunal accepted this evidence and concluded that the claimant suffers from functional disability to the extent of 50%.

4. The claimant in the course of his testimony had examined himself (PW-1) and also his wife Anita (PW-2), they having deposed on the strength of their respective affidavits (Ex. P1 and P2) respectively. During the course of her testimony, PW-2 proved copy of income tax return (ITR) for the assessment year 2005-2006 (Ex.

PW1/A1) which had been submitted by the claimant in the Income Tax Department on 17.06.2005 with regard to the income for the financial year 2004-2005 from the private business, the total income having been declared at Rs.97,060/- with tax liability of Rs.8,412/-. The tribunal, however, rejected the evidence about the income, observing that the ITR for the previous or subsequent years had not been shared nor was anyone called from the Income Tax Department. On this ground, the tribunal made the calculation of loss of prospective income with the help of minimum wages of a skilled worker (Rs.3,736/-).

5. The claimant by the appeal at hand raises the issue of deficiency of compensation. The appeal was admitted by order dated 17.07.2012 with directions that it shall come up in its own turn from the category of 'regulars'. On being called out, there is no appearance for the claimant. The matter has been considered with the assistance of the counsel for the insurer.

6. The grievance raised in the appeal about the income is found to be correct. There was no challenge to the proof of ITR, copy of the same having been proved by PW-2. The fact that the claimant did not summon any witness from the Income Tax Department, thus, would be inconsequential. The non-production of any other ITR only shows the possibility that the claimant may have started business from which he was earning his livelihood during the financial year 2004-2005 itself. Be that as it may, it was improper to reject the income declared in the ITR.

7. Since the functional disability has been assessed to the extent of 50%, the contention in the appeal that the tribunal fell into error by assuming the loss of earning capacity to the extent of 25% is incorrect. The submission that the claimant has been rendered totally disabled is also not borne out from the record or medical opinion. In these circumstances, compensation for the prospective loss of income would have to be made on the functional disability of 50%.

8. Following the ruling of the Constitution Bench of the Supreme Court rendered on 31.10.2017 in *SLP (C) 25590/2014, National Insurance Company Ltd. Vs. Pranay Sethi and Ors.*, the element of future prospects of increase to the extent of 40% deserves to be added in the case of the claimant who falls in the category of 'self-employed'. The submission of the insurer that such element cannot be included in an injury case is incorrect.

9. The loss of prospective income due to disability is, thus, re-computed as [Rs.97,060/- (-) 8412 x 140/100 x 50 / 100 x 15] Rs.9,30,804/-. Therefore, the award needs to be increased by [Rs.9,30,804/- (-) Rs.3,36,240/-] Rs.5,94,564/- (Rupees Five Lakh ninety four thousand five hundred and sixty four only).

10. The appeal also raises grievance about inadequacy of compensation under the head of medical charges. It is noted that the tribunal has gone by the medical expenses which were actually proved. Therefore, there is no scope for any enhancement under that head.

11. Thus, the award is increased to [Rs.6,14,800/- + Rs.5,94,564/-] Rs.12,09,364/-, rounded off to Rs.12,10,000/- (Rupees Twelve Lakh

and ten thousand only). The award is enhanced accordingly. It shall carry interest as levied by the tribunal.

12. The insurer is directed to pay the enhanced portion of the award by requisite deposit with the tribunal within 30 days making it available to be released to the claimant.

13. The appeal is disposed of in above terms.

NOVEMBER 03, 2017

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R.K.GAUBA, J.

