

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 480 of 2007

Appellant :- Naveen Kumar Sharma

Respondent :- Ayaj Khan And Others

Counsel for Appellant :- B.P. Verma

Counsel for Respondent :- Radhey Shyam, Avdhesh Chandra Nigam

Hon'ble Saral Srivastava, J.

1. Heard Sri B.P. Verma, learned counsel for the claimant/appellant and Sri A.C. Nigam, learned counsel for the respondents.

2. The present appeal has been preferred by the claimant/appellant for enhancement of award dated 10.11.2006 passed by the Motor Accident Claims Tribunal/Additional District Judge, Court No.8, Mathura (hereinafter referred to as 'Tribunal') in M.A.C.P. No.330 of 2005.

3. Challenging the aforesaid award, learned counsel for the claimant/appellant has contended that claimant/appellant has suffered 45% disability which was proved, therefore, Tribunal has erred in law in not awarding any amount towards loss earning capacity on the ground that claimant/appellant is a Homeopathy doctor and despite the injury suffered by him in the accident, he can still do medical practice. It is submitted that because of the 45% disability suffered by the claimant/appellant, his efficiency has reduced and thus, Tribunal should have awarded compensation treating 45% loss earning capacity suffered by the claimant/appellant.

4. It is submitted that no amount towards future prospect has been awarded by the Tribunal whereas considering the age of the claimant/appellant i.e. 38 years, Tribunal should have awarded 40% towards future prospect to the claimant/appellant in view of the judgement of Apex Court in the case of ***Pappu Deo Yadav Vs. Naresh Kumar & Others, AIR 2020 SC 4424***. It is further submitted that Tribunal has erred in awarding lump-sum amount of Rs.2,55,000/- whereas considering the age of the claimant/appellant i.e. 38 years, Tribunal should have applied the multiplier of 15 in view of the judgement of the Apex Court in the case of ***Sarla Verma and others Vs. Delhi Transport Corporation***

and others 2009 (6) SCC 121 in computing the compensation. Lastly, it is urged that a very meagre amount of Rs.5,000/- has been awarded by the Tribunal whereas considering the nature of injuries suffered by the claimant/appellant, it should have awarded at least Rs.40,000/-.

5. Per contra, learned counsel for the respondents submits that it is not denied that claimant/appellant is a Homeopathy Doctor and he is still doing medical practice, therefore, he did not suffer any loss earning capacity on account of the injuries suffered by him in the accident. Accordingly, it is submitted that Tribunal has rightly not awarded any compensation for the loss earning capacity. It is further submitted that compensation awarded by the Tribunal is just and proper and needs no enhancement.

6. Be that as it may, the fact that claimant/appellant has suffered 45% disability is evident from the disability certificate issued by the Chief Medical Officer. Despite the fact that claimant/appellant is a Homeopathy Doctor, the disability suffered by him would result in reducing his loss earning capacity, and therefore, this Court is of the view that Tribunal has erred in law in holding that claimant/appellant did not suffer any loss earning capacity because of the injuries suffered by him in the accident as he is still doing medical practice. The accident had taken place in the year 2005 and more than 18 years have passed claimant/appellant has not received any compensation. This Court normally would have remanded the matter to the Tribunal to decide the issue of quantification of compensation afresh in view of the judgement of Apex Court in the case of **Raj Kumar Vs. Ajay Kumar and Another 2011 (1) T.A.C. 785 (S.C.)**, but considering the fact that 18 long years have passed since the date of accident, this Court proceeds to consider the loss earning capacity on the basis of material available on record.

7. Since, the insurance company is not disputing the fact that as per the disability certificate, claimant/appellant suffered 45% disability due to the injuries suffered by him in the accident, therefore, considering the fact that there is no evidence contrary to the evidence of disability certificate, this Court holds that claimant/appellant has suffered 45% loss earning capacity. Accordingly, compensation shall be computed treating the 45% loss earning capacity of the claimant/appellant.

8. The submission of learned counsel for the claimant/appellant in respect of future prospect has got force in view of the judgement of Apex Court in the case of **Pappu Deo Yadav (supra)** and thus,

following the aforesaid judgement of Apex Court, considering the age of the claimant, he is entitled to 40% towards future prospect.

9. So far as the submission of learned counsel for the claimant/appellant in respect of application of multiplier is concerned, the said submission is supported by the judgement of Apex Court in the case of **Sarla Verma (supra)** and thus, it is provided that enhanced amount of compensation shall be computed by applying the multiplier of 15.

10. The submission of learned counsel for the claimant/appellant with regard to compensation towards pain and suffering has also got substance. Thus, this Court holds that the claimant/appellant is also entitled to Rs.40,000/- instead of Rs.5,000/- towards pain and suffering.

11. It is also provided that enhanced amount of compensation shall carry 6% simple interest from the date of institution of claim petition till the date of its payment.

12. Thus, for the reasons given above, the appeal is partly **allowed** and the award of the Tribunal is modified to the extent indicated above. The insurance company is directed to pay the enhanced amount of compensation to the claimant/appellant within a period of three months from the date of production of a certified copy of this order. There shall be no order as to costs.

Order Date :- 1.11.2023

Sattyarth