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

% *Date of Decision : 08th September, 2015*

+ **MAC.APP. 90/2011**

SUNIL KALRA

..... Appellant

Through: Mr.Ashok Popli, Advocate

versus

RAJ KUMAR YADAV & ORS.

....Respondents

Through: Mr.D.K.Sharma, Advocate for
R-3.

PRATIBHA RANI, J. (Oral)

1. Vide impugned award dated 8th October, 2010, the appellant Sunil Kalra has been awarded a compensation of ₹3,68,000/- for the injuries suffered by him on 21st April, 2007 in the accident caused by the offending vehicle i.e. Tempo bearing registration No. HR-63-7587. The present appeal has been preferred by the appellant for enhancement of compensation.

2. The case of the appellant is that he was working as Scale-I Officer with Corporation Bank. On 21st April, 2007 while he was returning home from Najafgarh side on his scooter bearing registration No.HR-30/B-2193 he was hit by Tempo bearing registration No. HR-63-7587 at the crossing of Sector-22/23, Janki Chowk. The accident had taken place due to rash and negligent driving of respondent No.1, Raj Kumar Yadav, the driver. Respondent No.2 is the owner of the vehicle whereas respondent No.3, National Insurance Company Limited is the insurer of the offending vehicle.

3. The learned tribunal after considering the material on record awarded compensation of ₹ 3,68,000/- along with interest @ 9% per annum under the following heads:-

Medicines & Treatment	₹ 1,20,000/-
Loss of Income	₹ 1,88,000/-
Pain & Suffering	₹ 40,000/-
Conveyance & Special Diet	₹ 20,000/-
Total	₹ 3,68,000/-

4. The grievance of the appellant is that he sustained dangerous injuries on vital parts of the body including head injury and disfigurement of face and upper lip, remained under treatment for a long time and also on leave for eight months but the compensation awarded to the appellant under different heads is on lower side and inadequate. Even the compensation awarded towards Conveyance & Special Diet was on very lower side. The Tribunal also failed to consider the medical certificate issued by Sir Ganga Ram Hospital certifying loss of memory and the necessity to perform another surgery for removal of implants. The aspect of loss of earning capacity and future prospects have also not been considered by the learned Tribunal hence prayer has been made to enhance the compensation.

5. Learned counsel for the appellant has submitted that in this case substantial part of medical expenses incurred by the appellant though reimbursed by his employer, a sum of ₹1,10,000/- spent by the appellant from his own pocket, was not reimbursed to him. Learned counsel for the appellant has further submitted that out of the medical bill total amounting to ₹ 4,30,644/-, only a sum of ₹ 3,21,050/- stands reimbursed to him by his employer.

6. On behalf of the Insurance Company it is submitted that though the appellant was not specifically reimbursed cost of treatment to the extent of ₹ 1,10,000/- by his employer but he has been awarded a sum of ₹ 1,20,000/-

by the Tribunal towards medicine & treatment which takes into account the expenses not reimbursed by the employer.

7. It may be noted here that owner and driver have not preferred any appeal and the finding by the Tribunal about negligence by the driver of the vehicle has attained finality.

8. Perusal of treatment record of the appellant shows that immediately after the accident he was hospitalized in Ayushman Hospital but in view of his serious condition he was shifted to Sir Ganga Ram Hospital where he remained hospitalized from 23rd April, 2007 to 23rd May, 2007. Despite remaining hospitalized for one month, after discharge he could not be fully recovered and had to be re-admitted on 14th September, 2007.

9. The appellant deposed before the Court that he spent approximately ₹ 8 lakhs on his treatment.

10. As per the hospital record the petitioner remained under treatment at different hospitals like Ayushman Hospital, Sir Ganga Ram Hospital, Indian Spinal Injuries Centre, Indraprastha Apollo Hospitals and learned Tribunal has noted that it is not possible for the patient to preserve each and every bill. The nature of the injury suffered by him and the duration of the hospitalization, the number of surgeries performed, the long period he had to remain confined to bed and duration of leave i.e. eight months, required that for the injuries suffered by the appellant just and fair compensation should have been awarded to him.

11. The case summary recorded by Sir Ganga Ram Hospital is as under:-

“The patient, Mr.Sunil Kalra, 44-year old male, S/o Late Sh.Pyare Lal, R/o 422, Sector 22, Pkt. 1, Dwarka, New Delhi, met with a road traffic accident on 21.04.2007. The patient sustained injuries to right eyebrow, right side of face, upper lip, fracture shaft of left femur, fracture left coracoids process, fracture neck of left scapula and head injury.

CT-Head was done on 23.04.2007, which showed right parietal contusion and right sylvium fissure bleed and nasal bone fracture. Patient was admitted to ICU, where he was intubated and was sedated on 23.04.2007.

He was treated conservatively for head injury. MRI-Brain was done on 25.04.2007, which showed multiple small contusions right frontal, temporal, carpus collusum suggestive of diffuse axonal injury. He was operated on 27.04.2007 for fracture shaft of left femur.

Patient was extubated on 28.04.2007 and again intubated on 01.05.2007. Tracheostomy was done on 03.05.2007. Patient was then shifted to ward on 06.05.2007.

Presently patient is treated conservatively for head injury and post-operative surgical care in the form of I/V antacid. Feed is given through Ryle's tube.

The patient requires hospitalization for two more weeks, for which the additional approximate expenditure would be ₹ 56,000 (Rupees fifty six thousand approximately)."

12. In his affidavit filed before the Tribunal the appellant specifically stated that he remained bed ridden for eight months and had also suffered permanent disability as well memory loss due to the head injury. He had stated that he had spent ₹ 20,000/- on protein rich diet and ₹ 10,000/- on conveyance and approximately ₹ 16,000/- on attendant during the period he was confined. He has also stated that he spent almost ₹ 10,000/- on physiotherapy and consultation from various doctors.

13. Towards cost of Medicines & Treatment, though the appellant has claimed that he spent over ₹ 8 lakhs on his treatment, the medical bills submitted by him were for the amount of ₹ 4,30,644/-. It is admitted case of the appellant that out of this amount he has been reimbursed ₹3,21,050/-. The grievance of the appellant is that the amount of ₹1,10,000/- (approximately) as well the expenses on physiotherapy has not been reimbursed. The Tribunal has in para No.35 of the impugned award has observed that in view of the nature of the injuries suffered by the claimant he must have incurred expenses over and above the amount of bills placed

on record. The Tribunal has awarded ₹1,20,000/- to the appellant towards Medicines & Treatment which includes ₹1,10,000/- which was not reimbursed by the employer and remaining ₹10,000/- towards the expenses for which the claimant might not have preserved the bills.

14. During the course of hearing Mr.Ashok Popli, learned counsel for the appellant has been repeatedly questioned as to whether he was having bills for ₹3,70,000/- (approx.) (₹8 lakhs, as claimed –₹4,30,644/-, for which bills were submitted) to which Mr.Ashok Popli, learned counsel for the appellant submitted that he does not press this claim and the amount of compensation of ₹ 1,20,000/- awarded on this count may be maintained.

15. Learned counsel for the appellant has submitted that despite proving that the salary of the appellant was ₹25,114.68 per month the Court has not calculated the amount as per the gross salary proved on record.

16. In this regard it is necessary to mention that in fact the appellant has not suffered any loss of salary for the period of 8 months during which he remained on leave. Rather the compensation has been awarded for the reason that the appellant was forced to be on leave to recover from the injuries sustained by him and he would have got encashment for these leaves or availed as per the requirement. Even in case of encashment of leave, entire gross salary is not paid and encashment of leave is for the amount of basic pay plus grade pay plus dearness allowance. Thus, out of the gross monthly salary of the appellant, taking note of the legal position and deductible allowances, the loss of income has been calculated as under:-

(a)	Basic Pay	:	₹ 18,800/-
(b)	Dearness Allowance	:	₹ 5,243/-
(c)	C.C.A.	:	₹ 540/-
	Actual Salary	:	₹ 24,473/-

17. The Tribunal has also noted that for the purpose of calculation of loss of income, even the tax liability is required to be deducted. Thus, loss of income has been calculated @ ₹ 23,000/- per month and a sum of ₹1,88,000/- has been awarded under the head Loss of Income.

18. Mr.Ashok Popli, learned counsel for the appellant does not dispute above legal proposition and has not pressed for any enhancement on this count.

19. It is submitted by the learned counsel for the appellant that appellant has suffered head injury, loss of memory, fracture of shaft left femur, fracture left coracoids process, fracture of neck (left scapula) and multiple injuries on right eyebrow, right side of face, upper lip and various wounds all over the body for which he has undergone unbearable pain during the period of eight months when he remained confined to bed. He has further submitted that apart from various injuries undergone by the appellant, physiotherapy for long time and disfigurement as shown in the photographs before the Tribunal, the award of ₹ 40,000/- on this count was inadequate.

20. I agree with the learned counsel for the appellant that the appellant who had suffered dangerous injuries including head injuries and multiple fractures of vital parts of the body including neck, face, the award of compensation of ₹40,000/- is very low. Further for the gratuitous services rendered by the family of the appellant the Tribunal should have awarded just and reasonable compensation which has not been done in this case. Various visits to various hospitals at different point of time prove that considerable amount must have been spent by the appellant on conveyance and special diet as well.

21. Thus, the overall compensation to the which the appellant is found entitled is as under-

<i>Under the head</i>	<i>Compensation granted by Tribunal</i>	<i>Compensation enhanced/granted by this Court</i>	<i>Compensation to which appellant now entitled</i>
Medicines & Treatment	₹1,20,000/-	-	₹1,20,000/-
Loss of income	₹1,88,000/-	-	₹ 1,88,000/-
Pain & sufferings	₹40,000/-	₹35,000	₹ 75,000/-
Conveyance and special diet	₹20,000/-	₹10,000/-	₹ 30,000/-
Gratuitous service rendered by the family members	-	₹15,000/-	₹15,000/-
TOTAL	₹ 3,68,000/-	₹ 60,000/-	₹ 4,28,000/-

22. The respondent No.3/Insurance Company is directed to deposit the enhanced compensation of ₹ 60,000/- along with interest @ 9% per annum from the date of filing of the claim petition till deposit in the Court. On receipt of the said amount, the same may be disbursed to the claimant.

23. Appeal stands disposed of.

Copy of the order be given dasti to learned counsel for the parties.

(PRATIBHA RANI)
JUDGE

SEPTEMBER 08, 2015

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