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

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Date of Decision: 28.08.2015

+ MAC.APP. 72/2004 and CM No.18993/2014

PRANAB GOBINDA BHAUMIK Appellant

Through Ms.Aruna Mehta, Advocate.

versus

CHANDU YADAV AND ORS. Respondents

Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

CM No.18993/2014 (for condonation of delay of 11 days in filing the affidavit and bills)

For the reasons stated in the application, the delay is condoned.

The application is disposed of.

MAC.APP. 72/2004

1. The present appeal is filed by the appellant/claimant seeking enhancement of compensation awarded vide Award dated 16.10.2003.
2. I may at the outset mention that on 26.11.2009 the appellant was permitted to lead additional evidence before this court. The appellant led his own evidence as AW-1 on 22.02.2010. Thereafter the matter was

listed in court on 04.04.2011 when none appeared for the appellant and the matter was dismissed for non-prosecution. Pursuant to an application filed for restoration, the appeal was restored on 01.09.2014. On 09.10.2014, despite having led evidence the second time once again a request was made that the appellant seeks an adjournment for leading additional evidence to prove the functional disability suffered by the claimant and also additional expenditure incurred by the appellant after passing of the Award. This court on that date noted that the appeal is of 2004 and the accident took place on 20.04.2000. In the interest of justice, the appellant was permitted to place on record bills pertaining to medical expenditure incurred after passing of the Award supported by an affidavit of the claimant. The bills have now been filed.

3. The brief facts which led to filing of the present claim petition are that the appellant was going on his scooter from Gole Market. At Naraina Vihar, he was hit by a Maruti Zen at around 12 noon said to be driven by respondent No.1 at a high speed and in a rash and negligent manner. The appellant was taken to hospital and after giving first-aid, he was transferred to AIIMS. He lost sensation below his neck and was under severe pain and agony. He was operated upon on 21.04.2000 and remained admitted till 28.04.2000.

4. Based on the evidence on record, the Tribunal concluded that the accident took place due to the rash and negligent driving of the said Maruti Zen car.

5. On compensation, the Tribunal noted that the appellant at the time of the accident was 55 years old. He suffered a fracture of the spinal cord and was operated upon. He has claimed that he was confined to bed for

about six months. As per the Disability Certificate issued by the Medical Board of AIIMS, the appellant was physically handicapped by 60%. Based on the evidence on record, the Tribunal noted that the appellant had become permanently handicapped by 60% and was entitled to compensation for permanent disability and loss of future earnings. The Tribunal noted that his monthly income was Rs.5,000/- per month. 60% having been assessed as functional disability, the loss of income was assessed at Rs.3,000/- per month, 1/3rd was deducted for personal expenses and applying the multiplier of 8 a sum of Rs. 1,92,000/- was awarded for the loss of income.

6. In total, the Tribunal awarded the following compensation.

i)	Amount spent on purchase of medicines, MRI, X-rays, physiotherapy etc. round off	Rs.60,500/-
ii)	Amount spent on conveyance	Rs.7,000/-
iii)	Amount spent on special diet	Rs.8,000/-
iv)	Loss of earnings for 6 months	Rs.30,000/-
v)	Mental and physical pain and agony	Rs.60,000/-
vi)	Future medical treatment	Rs.40,000/-
vii)	Loss due to functional disability	Rs.1,92,000/-
	Total	Rs.3,97,500 /-

7. Hence, a total compensation of Rs. 3,97,500/- was awarded.

8. I have heard the learned counsel for the appellant. None appeared for the respondent. In the course of the submissions, she sought permission to file written submissions to further elaborate her submissions. Permission was granted and the appellant has filed his written submissions. As per the written submissions, the appellant seeks

enhancement of compensation as follows:-

- (i) On the loss of income, it is stated that the appellant is entitled to loss of income for three years and not for six months as awarded by the Tribunal. Rs.1,80,000/- is sought on this account.
- (ii) Under the head of medicine and physiotherapy undertaken till date, it is averred that a sum of Rs. 1,63,650/- has been spent after filing of the claim petition which the appellant is entitled to recover.
- (iii) It is further stated that the appellant requires physiotherapy in future for lifelong for which the appellant would require at least Rs.3 to 4 lacs as the physiotherapy costs Rs.500 per sitting.
- (iv) On the assessment of functional disability, the appellant seeks enhancement of functional disability from 60% to 80%.
- (v) It is further urged that while assessing the loss of income due to the physical disability, the Tribunal had to adopt the multiplier of 9 keeping into account that the age of the appellant at the time of the accident was 55 years.
- (vi) It is further averred relying upon the judgments of the Supreme Court that under the head of pain and suffering, the appellant should have been awarded a sum of Rs.2 lacs.
- (vii) It is further averred that the appellant is disabled to the extent of 60% and needs the assistance of others to do his daily chores. He seeks a sum of Rs.57,600/- on this account.
- (viii) He also seeks loss of amenities @ Rs.2 lacs.
- (ix) For future medical treatment, a sum of Rs.2 lacs is sought.

9. I may deal with the above submissions.

10. We may look at the evidence on record to support the above claim of the appellant. Before the Tribunal the only evidence led by the appellant is his own evidence as PW-1 which was recorded on 08.04.2002. Before this court also, he has again got his evidence recorded pursuant to order of this court dated 26.11.2009 on 22.02.2010.

11. Coming to the claim for loss of income for a period of three years, a perusal of the evidence filed before the Tribunal by the appellant shows that he only claims that he became a permanently disabled person and is not in a position to do his daily chores. There is nothing to show that he was unable to carry on any earning activity for a period of three years as is sought to be claimed.

12. Similar is the position regarding the evidence by way of affidavit before this court dated 14.01.2010. In the absence of any evidence, I see no reason to change the period of six months as accepted by the Tribunal for computing loss of income.

13. The second claim sought by the appellant is a sum of Rs.1,63,650/- under the head of medicine and physiotherapy undertaken till date. The Tribunal had noted that the total bills placed on record show that the appellant had spent Rs.60,500/- on medicine and physiotherapy. The said sum was awarded to the appellant. Another sum of Rs.40,000/- was awarded for future treatment. In his evidence by way of affidavit dated 14.01.2010, there is no reference to any additional medical expenses incurred by the appellant. However, pursuant to the order of this court dated 26.11.2009, the appellant has filed bills for physiotherapy for Rs.1,54,000/-. A perusal of the bills shows that they are from one Dr.Dharmendra Gopal who writes his official address as Sr. Consultant,

Janki Dass Kapur Memorial Hospital, Naraina Road, New Delhi. The bills also mention the residence of the doctor as 181-B, O Block Extension, Vani Vihar, Uttam Nagar, New Delhi. The bills start from February 2011 and go up to September 2014. They are approximately of Rs.5000/- per month showing daily treatment. The bills are on a standard format and one of the bills reads as follows:

“ Cash/Cheque Receipt

Received with thanks a sum of amount Rs.Three Thousand Only (Rs.3,000/-) from Mr. Pranab Gobinda Bhaumik for clinic professional consultation and treatment/domestic professional visit and treatment given for Spastic Quadriplegia. Diagnosis made/referred by Dr.B.C.Jain from dated 31st March 2012 to 20th April 2012 total no. of visits were 15 (fifteen)”

14. Hence, the receipts give no details of the purpose for which the bills have been generated i.e. whether it was professional consultation or it was a physiotherapy being done or any further details. These Bills of physiotherapy placed on record do not inspire confidence. The doctor namely Dharmendra Gopal shows his official address as Janki Dass Kapur Memorial hospital, Naraina road, New Delhi-110008. His residence is shown as O block Extension, Vani Vihar, Uttam Nagar, New Delhi-59. This is not mentioned as a Clinic on the bill. The appellant has also given his residential address as Uttam Nagar. The distance between Uttam Nagar i.e. residence of the appellant and Naraina Road where the office of Dr. Dharmendra Gopal is situated is roughly 11 kilo Meters. Physiotherapy equipment would be presumably available only in Naraina Road Hospital. It is difficult to see how the appellant commuted for physiotherapy to such a considerable distance every day.

15. There is also no attempt to show that the appellant would require regular physiotherapy in this manner even ten years after the accident. There is only one medical prescription on record which is dated 05.07.2007 which states “continue exercises as advised”. Other than that, there is another prescription of 16.04.2010 of Sir Ganga Ram Hospital where there is no reference to any need for regular exercise. Given the sketchy nature of the evidence placed on record, it is not possible to accept the contention of the appellant that he is spending a sum of Rs.5,000/- per month continuously since the date of the accident i.e. from the year 2000 on physiotherapy. I reject the enhanced claim sought by the appellant on this account.

16. Coming to the next contention of the appellant for enhancement of functional disability from 60% as awarded by the Tribunal to 80%. In this context I may note that the evidence before the Tribunal i.e. the only statement made by the appellant was that he has become a permanently disabled person and is not able to do any work. There is no attempt to explain the extent of functional disability. As per the evidence, he was a supplier of the electric lamp and used to earn Rs.9,000/- per month. He was an income tax assessee. In his affidavit filed pursuant to order dated 9.10.2014, the appellant states that he finds difficulty in standing and sitting and can walk only 5 to 10 steps at home with difficulty. He has no control over urine and bowel. The appellant was not cross-examined on the affidavit filed pursuant to the order dated 09.10.2014. However, I am persuaded to partially accept this averment in view of the Certificate issued by Department of Physical Medicine and Rehabilitation, AIIMS, New Delhi dated 09.01.2003 which states that the appellant is suffering

from traumatic spastic quadriplegia with mild neurogenic bladder & bowel dysfunction.

17. A reference may also be had to the disability certificate issued by AIIMS relevant portion of which reads as follows:-

“... Traumatic spastic quadriplegia with mild neurogenic bladder and bowel impairment. ...”

18. In the light of the above evidence, I enhance the functional disability as awarded by the Tribunal from 60% to 80%

19. As the age of the appellant was above 55 years at the time of accident, a multiplier of 9 has been adopted. Further, the learned Tribunal has wrongly deducted 1/3rd towards personal expenses as while computing loss of income due to functional disability no such deduction is to be made.

20. Regarding the contention of the appellant for enhancement of income by 15% on account of future prospects, in my opinion keeping in view of the judgment of the Supreme Court in the case of **Rajesh & Ors. vs. Rajbir Singh & Ors., (2013) 9 SCC 54**, the loss of income due of functional disability would have to be enhanced by 15%. The same is accordingly granted to the appellant.

The loss of income for functional disability now would be $(5000 + 15\% \times 80\% \times 12 \times 9) = \text{Rs.}4,96,800/-$.

21. The next contention raised by the appellant pertains to pain and suffering suffered by the appellant. The Tribunal awarded Rs.60,000/- under the head of Physical and mental agony and pain. I enhance the same to Rs.1,60,000/-.

22. On the issue of future cost of treatment and expenses, the appellant

seeks Rs.2 lacs. In my opinion given the nature of serious functional disability and the nature of injury suffered, the appellant is likely to spend on future medical expense and treatment. I award a sum of Rs.1 lac for future medical treatment and expenses instead of Rs.40,000/- awarded by the Tribunal.

23. The total compensation now payable to the appellant would be as follows:-

	Amount spent on purchase of medicines, MRI, X-Rays, Physiotherapy etc.	Rs.60,500/-
	Amount spent on conveyance	Rs.7,000/-
	Amount spent on special diet	Rs.8,000/-
	Loss of earnings for six months	Rs.30,000/-
	Mental and physical pain and agony	Rs.1,60,000/-
	Future medical treatment	Rs.1,00,000/-
	Loss due to functional disability	Rs.4,96,800/-
	Total	Rs.8,62,300/-

24. Accordingly, the total compensation now comes to Rs.8,62,300/-.

25. Respondent No.3/Insurance Company will pay the additional compensation along with interest @ 7% per annum from the date of the filing of the claim petition till the appeal was dismissed in default on 04.04.2011. I have made the interest payable upto the date of dismissal of the appeal as the appellant has been responsible himself for causing delay in disposal of the present appeal. Respondent no. 3 shall pay the abovementioned compensation within six weeks from today.

26. The appeal stands disposed of.

(JAYANT NATH)
JUDGE

AUGUST 28, 2015
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