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

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Date of Decision : 19<sup>th</sup> August, 2015

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**MAC.APP. 899/2005**

ROYAL SUNDARAM ALLIANCE INSURA ..... Appellant

Through: Mr.Pankaj Seth, Advocate.

versus

FARAHIM KHAN & ORS. .... Respondents

Through: None.

**PRATIBHA RANI, J. (Oral)**

1. The instant appeal has been filed the appellant – Royal Sundaram Alliance Insurance Co. Ltd. impugning the award dated 23.07.2005 passed by learned Tribunal in claim petition bearing Suit No.494/2003 limited to the quantum of compensation awarded to the claimant/injured Farahim Khan.
2. Vide impugned award dated 23.07.2005, the learned Tribunal had disposed of three claim petitions bearing Suit Nos.494/2003, 495/2003 and 496/2003.
3. The challenge of the appellant – insurance company in this appeal is limited to the award of compensation to the injured Farahim Khan in Suit No.494/2003.
4. On 18.11.2005 when this appeal came up for hearing before this Court, the submissions made on behalf of the appellant – insurance company have been recorded as under:-

**‘CM No.16053/2005**

*It is stated by the learned counsel for the appellant that ₹25,000/- in terms of Section 173 of the Motor Vehicles Act, 1988 has been deposited in this Court. Let entire amount as per the award dated 23<sup>rd</sup> July, 2005 be deposited with the*

*learned Motor Accidents Claim Tribunal within a period of three weeks. Amount of ₹1,90,000/- may be released in favour of respondent No.1 in terms of the impugned award dated 23<sup>rd</sup> July, 2005. The balance amount may be kept in a FDR initially for a period of six months. **This order is being passed as the learned counsel for the appellant states that in terms of the grounds of appeal the compensation awarded to the appellant is excessive to the extent of ₹45,000/- (approximately).***

5. I have heard Mr.Pankaj Seth, Advocate for the appellant – insurance company and carefully gone through the record.

6. The issue revolves around the compensation granted by the Tribunal. A total compensation of ₹2,36,000/- was awarded to the claimant on following counts:-

|                                                                                                                                                          |                               |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|
| Loss of earning capacity on account of permanent disability qua whole body taken as 15% (in respect of left upper limb 26%) applying multiplier of '16'. | ₹1,68,000/-                   |
| Expenses incurred on medical treatment.                                                                                                                  | ₹10,000/-                     |
| Conveyance and diet                                                                                                                                      | ₹3,000/- each (Total ₹6000/-) |
| Loss of income during period of treatment for two months                                                                                                 | ₹12,000/-                     |
| Mental pain and agony                                                                                                                                    | ₹20,000/-                     |
| Loss of future enjoyment of life                                                                                                                         | ₹20,000/-                     |
| <b>TOTAL</b>                                                                                                                                             | <b>₹2,36,000/-</b>            |

7. The quantum of compensation awarded to the respondent No.1 Farahim Khan has been challenged mainly on the following grounds:-

- (i) The income tax return for the assessment years 2002-2003 and 2003-2004 have been filed after the date of accident.
- (ii) The multiplier of '15' should have been applied by the Tribunal instead of '16'.
- (iii) The claimant/injured being an Advocate by profession, there was no loss of earning capacity on account of permanent disability to the extent of 26% in respect of left upper limb.

**Contention No.1**

8. Perusal of the impugned award shows that the respondent No.1/injured was aged about 35 years on the date of accident and had been practicing as an Advocate in Karkardooma Court. He had been supporting his family consisting of his wife and son and was also maintaining a motorcycle at that time. Learned Tribunal has taken note of the income tax returns Ex.PW1/4 and Ex.PW1/5 for the assessment years 2002-2003 and 2003-2004 wherein income has been claimed to be ₹70,000/- to ₹72,000/- per annum. The income so declared in the income tax return has been taken as annual income of the respondent No.1. For a practicing Advocate aged about 35 years, even in the year 2003 when the respondent No.1 suffered injuries, taking his income as ₹70,000/- per annum, which is less than ₹60000/- per month, cannot be said to be exorbitant. It may also be noted here that the respondent No.1 has taken treatment even from private hospitals which is a reflection of his earning capacity to spend on his treatment as well.

**Contention No.2**

9. Another contention of the appellant that correct multiplier in this case

should have been '15', needs to be rejected in view of the decision of Supreme Court in *Sarla Verma vs. Delhi Transport Corporation* 2009 (6) Scale 129 wherein for the persons between the age of '31 years to 35 years', the applicable multiplier is '16'.

### **Contention No.3**

10. The third contention raised by learned counsel for the appellant before this Court that the claimant/injured being an Advocate by profession, there was no loss of earning capacity on account of permanent disability to the extent of 26% in respect of left upper limb.

11. In the case of *Kavita v. Deepak & Ors.*, Civil Appeal No.5945/2012 decided on 22.08.2012, the Supreme Court laid down that an attempt should always be made to award adequate compensation not only for physical injury and treatment but also for the loss of earning and inability to lead a normal life and enjoy amenities, which would have been enjoyed but for the disability caused due to the accident.

12. In *Raj Kumar v. Ajay Kumar & Anr.*, 2011 (1) SCC 343, the Supreme Court brought out the difference between permanent disability and functional disability resulting in the loss of earning capacity. It was laid down that the compensation on account of loss of earning capacity has to be granted in accordance to the nature of job undertaken by the victim of motor accident. Paras 11 and 14 of the report are extracted hereunder:

*“11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the*

*permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. 2010 (10) SCC 254 and Yadava Kumar v. D.M., National Insurance Co. Ltd. 2010 (10) SCC 341.*

*x x x x x x*

*13. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity."*

14. Undisputedly, the respondent No.1 is an Advocate. It is a matter of common knowledge that so many times the Advocates have to carry the case files in their hands. Learned Tribunal has noted the testimony of PW-2 Dr. Manoj Goyal, Orthopaedics Surgeon, Surya Hospital wherein he has stated that patient Farahim Khan was operated upon in the hospital on

14.04.2003 and lunette bone excision was done in brachial block. Dr.Manoj Goyal has also stated that due to the injuries suffered by the patient, he may have difficulty in grip of hand, pain, restriction of movement and weakness of wrist joint and may have stiffness and pain in finger which may occur for prolong period. PW-2 has stated that the patient suffered permanent disability in this accident.

15. Respondent No.1 being an Advocate must have suffered loss of earning capacity on suffering permanent disability in respect of left upper limb in his professional capacity. In such circumstances, taking in view the nature of profession being carried out by the respondent No.1, the assessment by learned Tribunal assessing the loss of earning capacity to be ₹10,500/- per annum taking the permanent disability to be 15% qua the whole body cannot be termed to be excessive.

16. In view of above discussion, the appeal is dismissed.

17. The balance compensation amount of ₹ 45,000/- alongwith interest accrued thereon be released in favour of the respondent No.1

18. The statutory amount of ₹ 25,000/- be released in favour of the appellant/insurance company.

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

**PRATIBHA RANI, J.**

**AUGUST 19, 2015**

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