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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 29th January, 2015

+ **MAC.APP. 827/2013**

VIJAY PAL

..... Appellant

Through: Mr. O.P. Mannie, Advocate

versus

PAWAN KUMAR SAINI & ORS.

..... Respondents

Through: Mr. S.L. Gupta, Advocate for
Respondent no.3.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The appeal is for enhancement of compensation of Rs.7,94,478/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) by the judgment dated 06.05.2013.
2. The details of the compensation awarded by the Claims Tribunal is given hereunder:

Sl.No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Medicines and Treatment	Rs.5,24,482/-
2.	Pain and Suffering	Rs.50,000/-

3.	Loss of Income	Rs.1,89,996/-
4.	Conveyance and Special Diet	Rs.20,000/-
5.	Loss of Amenities	Rs.10,000/-
	Total	Rs.7,94,478/-

3. It is urged by the learned counsel for the Appellant that no compensation has been awarded towards loss of earning capacity on account of permanent disability. Compensation awarded towards pain and suffering, conveyance and special diet and loss of amenities is on the lower side. No compensation has been awarded towards attendant charges, whereas compensation awarded towards loss of income is only for 12 months as against the period of 15 months for which the Appellant was actually away from work.
4. During pendency of the appeal, the Appellant was referred to the Medical Superintendent, Hindu Rao Hospital, Malkaganj to assess his permanent disability. A certificate dated 11.01.2014 was issued and sent to this Court by the Medical Board. The medical certificate shows that the Appellant has suffered 15% permanent physical impairment in relation to his right lower limb. It is a matter of record that on account of injuries suffered in the accident, there was total hip replacement (As clear from certificate Ex.PW1/120). The Appellant was advised not to sit cross-leg or squat to avoid dislocation of hip prosthesis and for

prolonged life of hip implant.

LOSS OF EARNING CAPACITY:

5. It is well-settled that compensation on account of permanent disability affecting earning capacity can be granted only when the disability actually affects the earning capacity of the injured. (*Raj Kumar v. Ajay Kumar & Anr.*, 2011 (1) SCC 343). In the instant case, PW-3 Anil Kumar Sharma was examined by the Appellant who testified that the Appellant rejoined his duty in April, 2011. It is nowhere the case of the Appellant that his salary was reduced. So practically, there was no loss of earning capacity suffered by the Appellant.
6. At the same time, it may be noticed that the Appellant was working as a Site Engineer with K.R. Anand, Engineers and Contractors. Although the Appellant's salary immediately on joining his duty was not affected, but on account of total hip replacement, his earning capacity and potential income were definitely affected. The Appellant may always not work with the present employer. Total Hip replacement does have an impact on the working capacity. In the circumstances, I would make a guess work and take functional disability affecting earning capacity to the extent of 7.5% as against the disability of 15% as per the Disability Certificate issued by the Medical Board. On a salary of Rs.16,000/- per month and applying a multiplier of 15 on the age of the Appellant being 39 years,

compensation on account of loss of earning capacity comes to Rs.2,16,000 (Rs.16,000/- x 7.5% x 12 x 15).

ATTENDANT CHARGES:

7. The Appellant suffered fracture NOF right, fracture ribs, hip fracture and consequently, there was hip replacement. He was admitted in Orthoplus Hospital from 26.12.2009 to 23.01.2010 and then from 02.06.2010 to 15.06.2010. Considering the nature of injuries, the Appellant did require an attendant. Even if gratuitous services were rendered by some family members, the Appellant would be entitled to compensation for the same. I am therefore, inclined to grant compensation for a period of six months @ Rs.4,000/- per month amounting to Rs.24,000/-.

CONVEYANCE AND SPECIAL DIET:

8. Considering the prolonged treatment, the lumpsum compensation of Rs.20,000/- awarded towards conveyance and special diet is raised to Rs.20,000/- each towards conveyance and special diet.

PAIN AND SUFFERING & LOSS OF AMENITIES:

9. From the certificate Ex.PW1/120 and the fact that the Appellant had to undergo total hip replacement, he will always have difficulty in sitting cross-legs, squatting, running and standing for a longer period. Compensation of Rs.50,000/- towards pain and suffering and Rs.10,000/- towards loss of amenities was on

the lower side. I would award a sum of Rs.75,000/- towards pain and suffering and Rs.1,00,000/- towards loss of amenities.

LOSS OF INCOME:

10. It is proved that the Appellant was unable to perform duty for a period of 15 months. I would award a compensation of Rs.2,37,495/- instead of Rs.1,89,996/- towards the same.
11. The recomputed compensation is tabulated hereunder:

Sl.No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Loss of Earning Capacity	-	Rs.2,16,000/-
2.	Attendant Charges	-	Rs.24,000/-
3.	Conveyance and Special Diet	Rs.20,000/-	Rs.40,000/-
4.	Pain and Suffering & Loss of Amenities	Rs.60,000/- (Rs.50,000 + Rs.10,000)	Rs.1,75,000/- (Rs.75,000/- + Rs.1,00,000/-)
5.	Loss of Income	Rs.1,89,996/-	Rs.2,37,495/-
6.	Medicines and Treatment	Rs.5,24,482/-	Rs.5,24,482/-
	Total	Rs.7,94,478/-	Rs.12,16,977/- -

12. The compensation is thus, enhanced by Rs.4,22,499/-.
13. The enhanced compensation of Rs.4,22,499/- shall carry interest @ 7.5% per annum.
14. 75% of the enhanced compensation shall be held in Fixed Deposit for a period of two years, four years, six years and eight years in equal proportion. Rest of the amount shall be released on deposit.
15. The enhanced compensation along with proportionate interest shall be deposited with the Claims Tribunal within four weeks by Respondent no.3 New India Assurance Company Ltd., failing which the enhanced compensation shall carry interest @ 12% per annum from the date of this order.
16. The appeal is allowed in above terms.
17. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

JANUARY 29, 2015

pst