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

Date of decision: 23rd April, 2015

+ **MAC.APP. 644/2010**

RAKESH KUMAR GIRI

..... Appellant

Through: Mr. Ajay Kumar, Adv.

versus

VEER SINGH & ORS.

..... Respondents

Through: Ms. Ankita Prabhakar, Adv. for R-1
& R-2.
Mr. K.L.Nandwani, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

G. P. MITTAL, J. (ORAL)

1. The appeal is for enhancement of compensation of ₹13,86,000/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the Appellant for having suffered injuries in a motor vehicular accident which occurred on 16.06.2008. The accident ultimately resulted in amputation of Appellant's left arm below elbow. The Appellant also suffered multiple fractures on his left leg.

2. In the absence of any appeal by the owner, driver and the Insurance Company, the finding on negligence has attained finality.
3. The compensation awarded as tabulated in para 21 of the impugned award is extracted hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Medicines and Medical Treatment	92,000/-
2.	Cost of Physiotherapy	5,000/-
3.	Loss of Earning Capacity due to Disability	11,86,000/-
4.	Loss of Amenities of Life	30,000/-
5.	Pain and Suffering	50,000/-
6.	Conveyance & Special Diet	23,000/-
	Total	Rs.13,86,000/-

4. It is urged by the learned counsel for the Appellant that the Appellant suffered 80% disability in respect of his left arm. However, his functional disability was considered as 60% only. It ought to have been considered at least 80%.
5. It is also contended that the Appellant was working as an Electrical Technician and Hydrolic Operator and there was evidence with regard

to his good future prospects, still no addition towards future prospects was awarded by the Claims Tribunal.

6. It is urged that the Appellant had proved bills for ₹65,700/- Ex.PW-1/25 to Ex.PW-1/34 still the Claims Tribunal declined to grant compensation as per the receipts and granted a consolidated sum of ₹5,000/- only towards the same.
7. On the other hand, learned counsels for Respondents no.1 and 2 and Respondent no.3 support the impugned judgment and state that the compensation awarded is just and reasonable.
8. It is well settled that in order to grant loss of future earning capacity, the Claims Tribunal and the Court are required to go into the functional disability on account of permanent disability suffered by any victim of a motor vehicular accident. In the instant case, the Appellant was working as an Electrical Technician and Hydrolic Operator. Appellant's employer came forward to depose that the Appellant was not attending to the work since the date of his accident. At the same time, with his qualification the Appellant would be able to earn at least to the extent of 40% of his earning capacity as an able-

bodied man. In view of this, the Claims Tribunal was justified in awarding 60% loss of earning capacity.

9. A perusal of the testimony of PW-2 Praveen Kumar reveals that the Appellant had joined M/s. Hari Udyog India in October, 2007 on a salary of ₹7,500/- per month and his salary at the time of the accident had increased to ₹9150/- per month. He also stated that if he would have continued to work in the firm, his salary would have doubled. Thus, it was established that the Appellant was in settled employment having good future prospects. Therefore, addition towards future prospects to the extent of 50% ought to have made (Appellant being 24 years). Consequently, the loss of earning capacity would come to ₹17,78,760/- (₹ 9,150/- x 12 + 50% x 18 x 60/100).
10. As far as amount of ₹65,700/- claimed to be spent on physiotherapy, I may say that no prescription by any orthopedic surgeon was placed on record to prove the period for which physiotherapy was required. The Physiotherapist, who had issued the bills and who carried out the physiotherapy was also not produced. The Claims Tribunal, therefore, was justified in not taking into account the bills Ex.PW1/25 to Ex.PW1/34.

11. At the same time, it goes without saying that in case of multiple injuries on left leg and amputation of left arm below elbow some physiotherapy must have been received. The compensation of ₹5,000/- as awarded by the Claims Tribunal towards the same seems to be on the lower side. I tend to increase the same to ₹10,000/- The overall compensation is re-computed as under:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Medicines and Medical Treatment	92,000/-	92,000/-
2.	Cost of Physiotherapy	5,000/-	10,000/-
3.	Loss of Earning Capacity due to Disability	11,86,000/-	17,78,760/-
4.	Loss of Amenities of Life	30,000/-	30,000/-
5.	Pain and Suffering	50,000/-	50,000/-
6.	Conveyance & Special Diet	23,000/-	23,000/-
	Total	Rs.13,86,000/-	Rs.19,83,760/-

12. The overall compensation is thus enhanced by ₹5,97,760/- which shall carry interest @ 7.5% per annum as awarded by the Claims Tribunal.

13. The appeal is allowed in above terms.

14. Pending applications, if any, also stand disposed of.

(G.P. MITTAL)
JUDGE

APRIL 23, 2015

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