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

Decided on: 11th February, 2015

\+ **MAC.APP. 1055/2012**

GIRISH BABU GUPTA ..... Appellant

Through: Mr.O.P. Manni, Advocate with Mr. Manish Maini, Advocate

versus

OMKAR SINGH AND ORS ..... Respondents

Through: Ms. Shantha Devi Raman, Advocate with Mr. Garud M.V., Advocate for Respondent no.4.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. **(ORAL)**

CM.APPL 16713/2012(delay)

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

2. The application stands disposed of.

MAC.APP.1055/2012

3. The appeal is for enhancement of compensation of Rs.8,46,719/- awarded by the Motor Accident Claims Tribunal

(the Claims Tribunal) to Appellant Girish Babu Gupta who suffered grievous injuries resulting in amputation of his right leg above the knee in a motor vehicular accident which occurred on 27.01.2008 at 11:00 a.m.

4. During inquiry before the Claims Tribunal, it was claimed that the Appellant was carrying on the business of cloth trading in the name and style of Gupta Cloth Emporium, South Ganesh Nagar, Delhi. He placed on record Income Tax Return (ITR) for A.Y. 2007-08 whereby he returned a total income of Rs.1,17,850/-. The Claims Tribunal awarded compensation of Rs.8,46,719/-, which is extracted hereunder:

S.No.	**Head of Compensation**	**Granted by the Claims Tribunal**
1.	Medical Expenses	Rs.2,29,511/-
2.	Loss of Future Income	Rs.2,96,096/-
3.	Loss of Income during treatment received for 4 months	Rs.21,112/- (Rs.5278 x 4)
4.	Non-Pecuniary Heads	Rs.3,00,000/-
	Total	**Rs.8,46,719/-**

5. The Claims Tribunal did not take into account the income of Rs.1,17,850/- as per the Income Tax Return on the ground that there was just one ITR and therefore, it awarded the loss of income for a period of four months and loss of earning capacity

taken as 42.5%.

6. The following contentions are raised on behalf of the Appellant:

   (i) The Claims Tribunal erred in not believing the income of the injured and awarding compensation for loss of income and loss of earning capacity on the basis of minimum wages; and

   (ii) The Claims Tribunal erred in taking the functional disability as only 42.5%. In case of amputation of leg above knee, the Appellant was totally disbelieved and loss of earning capacity ought to have been calculated on the basis of functional disability as 85%.

7. On the other hand, the learned counsel for Respondent no.4 Insurance Company supports the impugned judgment and states that the overall compensation awarded by the Claims Tribunal is just and reasonable.

DETERMINATION OF INCOME:

8. To determine the income of the Appellant, the Claims Tribunal ought to have appreciated the testimony of the Appellant in the shape of his Affidavit Ex.PW1/A and cross-examination recorded on 27.05.2009. Apart from the fact that the witness from the Income Tax Department proved the ITR for the A.Y. 2007-08, the Appellant testified that he was carrying on the business of of cloth trading in the name and style of Gupta

Cloth Emporium, South Ganesh Nagar, Delhi and was earning Rs.10,000/- per month. In cross-examination, this part of the testimony of the Appellant was not challenged either by the Insurance Company or the owner in spite of the fact that the Appellant was duly cross-examined on behalf of the owner as also the Insurance Company. In view of this, I see no reason to disbelieve the income of the Appellant to be Rs.1,17,850/- as pre-tax and Rs.95,273/- post-tax in the A.Y. 2007-08.

9. As far as award of compensation towards disability is concerned, it has been laid down in *Raj Kumar v. Ajay Kumar & Anr., (2011) 1 SCC 343* that the Court must assess the functional disability to ascertain the impact of disability on the earning capacity. It has come on record that the Appellant was carrying on the business of a cloth merchant. Therefore, the Appellant might have to travel to some places occasionally to procure cloth for his business. But at the same time, he was supposed to be at his shop/place of work mostly for the purpose of carrying out the retail sale. In view of this, in my view, 42.5% functional disability was rightly considered by the Claims Tribunal.

LOSS OF EARNING CAPACITY:

10. In the absence of any evidence towards future prospects, the Appellant will not be entitled to any addition particularly when his age was 52 years. (See *Reshma Kumari & Ors. v. Madan*

Mohan & Anr., (2013) 9 SCC 65 and *HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi and Ors. MAC APP No. 189/ 2014 decided on 12.01.2015*). The loss of earning capacity therefore, comes to Rs.4,45,401/- (Rs.95,273 x 11 x 42.5%).

11. Similarly, the loss of income for the treatment will be Rs.31,758/- (Rs.95,273/- ÷ 12 x 4).

12. In addition, considering the nature of injuries the Appellant was entitled to attendant charges. I tend to award a sum of Rs.6,000/- @ Rs.3,000/- for two months towards attendant charges.

13. The compensation is recomputed as under:

S.No.	**Head of Compensation**	**Granted by the Claims Tribunal**	**Granted by this Court**
1.	Medical Expenses	Rs.2,29,511/-	Rs.2,29,511/-
2.	Loss of Future Income/Loss of Earning Capacity	Rs.2,96,096/-	Rs.4,45,401/-
3.	Loss of Income during receiving treatment for 4 months	Rs.21,112/-	Rs.31,758/-
4.	Non-Pecuniary Heads	Rs.3,00,000/-	Rs.3,00,000/-
5.	Attendant Charges	-	Rs.6,000/-

	Total	**Rs.8,46,719/-**	**Rs.10,12,670/-**

14. The compensation is thus, enhanced by Rs.1,65,951/- which shall carry interest @ 7.5% per annum from the date of filing of the petition till its payment.

15. The enhanced compensation shall be deposited with UCO Bank, Delhi High Court Branch, New Delhi within six weeks.

16. 75% of the enhanced compensation shall be held in Fixed Deposit for a period of two, four and six years respectively. Rest of the compensation shall be released on deposit.

<u>LIABILITY</u>:

17. While dealing with the issue of liability, Respondent Insurance Company examined R4W1 who deposed about sending of notice under Order 12 Rule 8 of the Code of Civil Procedure, 1908 (CPC) requiring the owner and the driver to produce insurance policy and the licence to drive a commercial vehicle. On appreciating the evidence, the Claims Tribunal found that there was breach of the terms and conditions of the insurance policy and therefore, while making Respondent Insurance Company liable to pay compensation, it was granted recovery rights. The said order has not been challenged by the Appellant(claimant). The driver and owners, Respondents no.1 to 3 also preferred not to contest the appeal despite service. It is

therefore, made clear that the enhanced compensation along with interest as stated above shall be paid by Respondent no.4 Insurance Company, but the Insurance Company shall be entitled to recover the compensation awarded from Respondent no.2, the insured of the vehicle.

18. The appeal is allowed in above terms.

19. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

FEBRUARY 11, 2015
pst