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

% *Date of Decision : 30th September, 2015*

+ **MAC.APP. 1231/2012 & CM No.20091/2012 (Stay)**

NEW INDIA ASSURANCE CO. LTD. Appellant

Through: Mr.P.Acharya, Advocate

versus

NARENDER SINGH @ BIRENDER SINGH & ORS.... Respondents

Through: Mr.Multan Singh, Advocate.

AND

+ **MAC.APP. 1278/2012**

NARENDER SINGH @ BIRENDER SINGH Appellant

Through: Mr.Multan Singh, Advocate.

versus

BILKESHAN KAMAT & ORS Respondents

Through: Mr.P.Acharya, Advocate for R-3

PRATIBHA RANI, J. (Oral)

1. These two appeals bearing MAC.APP. No.1231/2012 and MAC.APP. No.1278/2012 arise out of the award dated 1st October, 2012 passed by learned Motor Accident Claims Tribunal whereby a total compensation of ₹1,98,413/- has been awarded to injured/claimant Narender Singh @ Birender Singh for the injuries suffered by him in a motor vehicle accident caused on 23.09.2010 by the offending vehicle i.e. Wagon-R bearing registration No.DL-3C-Z-6842.

2. On appreciation of evidence, the learned Claims Tribunal held that the accident was caused due to rash and negligent driving of Sh.Bilkeshan Kamat – driver of the offending vehicle.

3. The learned Claim Tribunal after considering the material on record awarded compensation of ₹ 1,98,413/- along with interest @ 9% per annum under the following heads:-

Treatment expenses	₹ 7,301/-
Pain & Sufferings	₹ 40,000/-
Diet & Conveyance	₹ 20,000/-
Attendant's charges	₹ 10,000/-
Loss of income	₹ 21,112/-
Disability/Loss of appearance/ enjoyment of life	₹ 1,00,000/-
Total	₹ 1,98,413/-

4. For the sake of convenience, appellant in MAC.APP No.1231/2012 i.e. New India Assurance Co. Ltd. shall be referred to as insurance company and appellant in MAC.APP.No.1278/2012 namely Narender Singh @ Birender Singh shall be referred to as claimant.

5. The finding of rash and negligent driving has not been challenged by the owner/driver of the offending vehicle and the same has attained finality.

6. On behalf of insurance company, it has been submitted that the learned Tribunal failed to appreciate that the permanent disability to the extent of 5% in respect of left lower limb has not caused any loss of earning capacity and at the most the earning capacity could have been assessed at 2.5%, hence award of compensation of ₹1,98,413/- is exorbitant. Learned counsel for the insurance company has further submitted that the compensation awarded to the claimant under heads 'Pain & Suffering', 'Diet & Conveyance', 'Loss of Income' and 'Disability/Loss of

appearance/Enjoyment of Life' is also on higher side and cannot stand the test of judicial scrutiny as compensation cannot be awarded as bonanza but has to be just and proper.

7. On behalf of claimant, Sh.Multan Singh, Advocate has submitted that the claimant in this case was non-matriculate and the minimum wages for a non-matriculate should have been ₹ 5850/- per month but the learned Tribunal in its award has taken the minimum wages ₹5278/- per month, which is not correct. It has been further submitted that the learned Tribunal has not considered the loss of future income and under non-pecuniary head, the compensation instead of being just and proper, is meagre. Learned counsel for the claimant has relied upon S.Manickam vs. Metropolitan Transport Corp. 2013 (6) LRC 128 (SC) and submitted that determination of quantum in motor accidents cases and compensation under Workmen's Compensation Act must be liberal.

8. In order to appreciate the rival contentions, it is necessary to refer to the testimony of the claimant and the treatment record produced by him. The claimant filed his examination-in-chief by way of affidavit stating that on 23.09.2010 at about 4.00 pm while he was standing on the steps of Shop adjoining the *Dhaba* where he was employed, he was hit by Bumper of Wagon-R (black colour) bearing registration No.DL-3C-Z-6842. He suffered injury on his left ankle. He was taken to Kailash Diagnostic Centre by his employer Sh.Manjit Singh. PCR was also informed and case FIR No.138/2010 under Section 279/337 was registered at PS Greater Kailash. Subsequently he was removed to Trauma Centre for his treatment. He has stated that he suffered 5% permanent disability which has affected his physical movement as well future earnings. He has also stated that he remained absent from duty for four months. During that period, he has

suffered mental pain and agony and became handicapped for whole of his life. He has also produced the bills of purchasing the medicines which are Ex.PW1/B (colly.).

9. The Investigating Officer has filed DAR alongwith the treatment record and copy of the FIR. On the directions issued by the Tribunal on 09.03.2011, the claimant was examined at Pt. Madan Mohan Malviya hospital wherein his physical disability has been assessed to be 5% in relation to his left lower limb. In the certificate, it is also mentioned that this condition is progressive/likely to improve and reassessment was recommended after a period of one year. After obtaining this certificate dated 02.06.2011 till date the claimant has not got himself examined to bring on record the medical report of reassessment of his condition.

10. The Claimant was working as kitchen helper at a *Dhaba*. At the time of suffering injury, the claimant was drawing monthly salary of ₹5000/- per month. As per his own affidavit he could not attend his job for a period of four month. The OPD slips from Safdarjung Hospital placed on record establish that he visited the hospital on 11.10.2010, 21.10.2010, 28.10.2010 and 06.12.2010.

11. On the basis of medical bills, the Tribunal has awarded ₹7,301/-. Thus the claimant cannot have any grievance that cost of treatment has not been reimbursed to him

12. Although the claimant had been getting salary of ₹5000/- per month, he has been awarded ₹21,112/- calculating the minimum wages payable to an unskilled worker i.e. ₹ 5278 X 4 months.

13. The contention of the claimant that he should have been awarded minimum wages payable to a non-matriculate clerk does not apply to his case as undisputedly he was an unskilled worker employed as kitchen helper

in a *Dhaba* and as per the minimum wages payable to an unskilled worker during that period was ₹5278/- per month and not ₹5850/- per month as claimed by the claimant, which is payable to a non-matriculate clerical, non-technical and supervisory staff. Thus, the claimant cannot be left with any grievance so far as award of compensation towards loss of income is concerned.

14. The nature of injury suffered by the claimant in this case is fracture of medial malleolus of left side and has been subjected to ORIF. The learned Tribunal has awarded ₹40,000/- towards pain and sufferings and ₹20,000/- towards conveyance and special diet, which can neither be termed as exorbitant nor inadequate. The learned Tribunal has also awarded ₹10,000/- towards the attendant charges presuming that due to the injury suffered, the claimant must have availed the services of some attendant. Not only that, for disability to the extent of 5% in respect of left lower limb and for disfigurement and loss of amenities of life, the learned Tribunal has awarded a sum of ₹1 lac to the claimant. It is a case where injury suffered by the claimant was on left ankle and as per the disability certificate issued by Pt.Madan Mohan Malviya hospital, it required reassessment of the nature of permanent disability which has not been got done till date. I am of the considered view that the award of total compensation of ₹1,98,413/- to the claimant cannot be considered as exorbitant as claimed by the insurance company or inadequate as claimed by the claimant.

15. Both the appeals are hereby dismissed.

16. The statutory amount of ₹25,000/- deposited by the insurance company at the time of filing MAC.APP. No.1231/2012 shall be refunded to the insurance company.

17. Perusal of the record reveals that 50% of the award amount has

already been released to the claimant as directed by this Court vide order dated 30.01.2014. The Registry is directed to issue directions to UCO Bank, Delhi High Court Branch to release remaining 50% of the award amount alongwith interest accrued thereon to the claimant.

A copy of this order be given dasti to learned counsel for the parties, as prayed.

PRATIBHA RANI, J.

SEPTEMBER 30, 2015

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