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

Date of Decision: 14th March, 2016

+ **MAC.APP. 235/2010**
RAM BABU

..... Appellant
Through Mr. Vinod Kumar Ahuja and Ms.
Ritu Singh, Advs.

versus

CHARANJEET SINGH & ORS

..... Respondent
Through Mr. Amit Gaur, Adv. for R-3

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellant suffered injuries in a motor vehicular accident that occurred at about 1.45 AM on 21.01.2002 in the area of Govindpuri, Kalkaji Road, New Delhi involving bus bearing registration No.DL 1PB 1984 (the offending vehicle), admittedly insured against third party risk with the third respondent herein (the insurer) for the period in question. He filed a claim petition under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act), registered as suit No.613/2002, which was decided by the Motor Accident Claims Tribunal (tribunal) by judgment dated 26.11.2009 whereby

compensation in the sum of ₹73,900/- was awarded with interest from the date of filing of the petition (26.11.2002), it having been calculated thus :

<i>“Treatment expenses :</i>	<i>Rs. 1530/-</i>
<i>Pain and sufferings :</i>	<i>Rs. 10,000/-</i>
<i>Special diet :</i>	<i>Rs. 1,000/-</i>
<i>Conveyance :</i>	<i>Rs. 1,000/-</i>
<i>Loss of Income :</i>	<i>Rs. 10,368/-</i>
<i>Loss of compensation on account of disability :</i>	<i>Rs. 50,000/-</i>
<i>Total :</i>	<i>Rs.73,898/-”</i>

2. The appellant came up in appeal seeking enhancement on the grounds that his claim about the income being in the region of ₹4,000/- per month was wrongly rejected; he was unfairly deprived of any compensation for loss of future income on account of disability suffered; and that the award under the non-pecuniary heads of damages is inadequate.

3. It is noted that the appellant had claimed in the petition that he was engaged in business to earn livelihood. During inquiry, he filed his own affidavit in evidence claiming he was working as a machine operator with M/s Nigam Prints, a company functional on Okhla Industrial Area. No formal proof about the said employment was mustered. In these circumstances, the tribunal felt constrained to proceed on the assumption that he would be earning minimum wages for an unskilled worker. Thus, notional income of ₹2,592/- was adopted as the benchmark. This Court finds no error in the said view taken inasmuch as even in appeal no concrete proof as to the actual nature of avocation or income has been offered. Treatment expenses as claimed have been fully covered.

4. There is, however, substance in the grievance as the loss of future earnings has not been taken care of. The claimant had shown, *inter alia*, through disability certificate (Ex.P1) issued on 13.05.2004 that he had been rendered permanently disabled to the extent of 45% in relation to the right lower limb on account of post traumatic ankylosis right knee with shortening of right leg. The disability was proved and affirmed even by Dr. R K Wadhwa (PW2) one of the members of the medical board which had examined the appellant leading to the disability certificate being issued. The tribunal, however, declined to grant any compensation on account of future loss of income for the reason the appellant had not been able to strictly prove his avocation. It proceeded to award lumpsum amount of ₹50,000/- towards loss of amenities of life and loss of enjoyment etc. owing to disability.

5. While the abovesaid award under the non-pecuniary heads of damages deserves to be upheld, the denial of loss of future income seems to be incorrect inasmuch as it is inherent in the conclusions reached by the tribunal that the appellant would have been earning from manual labour. Given the nature of injuries suffered and their aftermath, this Court is inclined to grant award for future loss of income on the conclusion that the disability would be at least to the extent of 18% in relation to the whole body [*Master Mallikarjun v. Divisional Manager, The National Insurance Company Ltd.* (2014) 14 SCC 396]

6. Thus computed, the loss of future income is to be calculated at $(2,592 \times 18 \div 100)$ ₹467/- per month. Since the appellant was 35 years old at the time of the accident (as per declaration in the petition), the loss of future

income may be calculated with the multiplier of 16. In this view, the loss of future income is computed as $(467 \times 12 \times 15)$ ₹84,060/-.

7. The tribunal noted that the appellant had not been able to prove medical expenses beyond ₹1,529/40. Though he had placed on record photocopies of some of the bills relating to such expenditure, the said proof was not accepted. In the given facts and circumstances, having regard to the nature of injuries suffered, it is not believable that the expenditure would have been so paltry as ₹1,530/- only. Thus, further amount of ₹20,000/- is added under the said head.

8. In above facts and circumstances, the compensation deserves to be increased by $(84,060 + 20,000)$ ₹1,04,060/-. The total compensation thus comes to $(1,04,060 + 73,898)$ ₹1,77,958/- rounded off to ₹1,78,000/-.

9. The compensation is enhanced as above. It shall carry interest at the rate levied by the tribunal.

10. The insurance company is directed to deposit the enhanced portion of the compensation with up-to-date interest with the tribunal within 30 days whereupon it shall be released to the claimant.

11. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 14, 2016
VLD