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

**Date of Decision: 18<sup>th</sup> May, 2016**

+ **MAC.APP. 369/2007**

**JAI PRAKASH**

..... Appellant

Through Mr. O P Mainnie, Adv.

versus

**SANJEEV KUMAR & ORS.**

..... Respondent

Through Mr. Ramesh Kumar, Adv. for R-3

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**JUDGMENT**

**R.K.GAUBA, J (ORAL):**

1. The appellant was 22 year old at the relevant point of time and was driving motorcycle bearing registration No.DL 4S AG 5387 (the motorcycle) on 28.12.2004, when it was involved in motor vehicular accident with bus (RTV) bearing registration No.DL IVA 2634 (offending vehicle) statedly driven in negligent manner. As a consequence, he suffered multiple injuries including compound fractures of both bones of right leg, loss of skin over right knee, deep wound over right knee, abrasions and blunt injuries all over the body. He filed an accident claim case (petition No.292/2006) on 14.11.2005 seeking compensation under Sections 166 & 140 of Motor Vehicles Act, 1988 (MV Act). In the said proceedings, the driver, owner and insurer of the offending vehicle were impleaded as parties, they now being first, second and third respondents respectively in appeal. The tribunal held inquiry and, by judgment 23.02.2007, returned a finding that the accident had occurred and the said injuries had been suffered by the

appellant (claimant) due to negligent driving of the offending vehicle. The said finding, not challenged any further, has since attained finality. By the impugned judgment, the tribunal awarded compensation in the sum of Rs.1,63,540/- with interest at 9% per annum from the date of filing of the petition directing the insurer (third respondent) to pay.

2. The appellant feeling dissatisfied, preferred the present appeal seeking enhancement of the compensation, his prime contention pressed at the hearing being that the loss of future income on account of disability suffered was not properly considered and that the awards under the pecuniary and non-pecuniary heads of damages are inadequate.

3. During the pendency of the appeal, on the prayer of the claimant (CM No.13498/15) he was referred by order dated 26.11.2015 to the Medical Superintendent of Doctor Hedgewar Hospital, Karkardooma, Delhi for a fresh medical board to be constituted for the claimant to be examined and a fresh assessment to be made as to the nature and extent of permanent disability suffered by him. Pursuant to the said direction, the medical board was constituted which included Dr. Sanjay Yadav Specialist Orthopedic (AW1) affirming that the claimant suffers from permanent disability in the right lower limb to the extent of 30%. The said certificate was duly proved by Dr. Sanjay Yadav (AW1) in the course of liberty granted for additional evidence to be adduced during the pendency of the appeal.

4. Arguments have been heard and record perused.

5. It is noted that the tribunal has awarded the compensation of Rs.1,63,540/- it being inclusive of Rs.40,000/- granted towards pain & injury, Rs.63,540/- towards medical expenses, Rs.15,000/- additionally for

future medical expenses, Rs.5,000/- towards conveyance and special diet besides Rs.40,000/- on account of loss of pay and amenities. It is noted that though the appellant had examined Dr. Gujral (PW3) under whom he had remained for treatment after the accident, the evidence of the said witness indicating that the claimant suffered physical impairment with chances to aggravate was not properly considered by the tribunal, inasmuch as the extent of disability was not even assessed nor any calculation made for loss of consequent future earnings.

6. The counsel for the claimant has argued on the basis of judgment of this Court in *New India Assurance Co. Ltd. v. Anuj Sharma* (2007) ACJ 640 that the evidence of PW3 bringing out that the claimant suffers from permanent physical impairment to the extent of 44% should result in a finding that he had suffered functional disability to the same extent. This plea, however, cannot be accepted. The evidence of PW3 and AW1, read together, shows that the claimant suffers from disability as an aftermath of compound fractures of both bones of the right leg. The assessment of PW3 with regard to the nature and extent of disablement vide an undated certificate (Ex.PW3/A) proved by him at the inquiry on 04.12.2006 was only a tentative assessment. Since the claimant himself requested for a fresh medical board to be constituted, its report having come on record vide Ex.AW1/A, the said latter opinion will have to prevail.

7. In the opinion of the board of doctors given in January, 2016, the disability assessed to the extent of 30% is in relation to the right lower limb. As per the case of the claimant he was working in a private service he did not disclose either in the pleadings or in the evidence, the nature of job assigned to him by his employer. In the facts and circumstances of the case,

the extent of disability in relation to one lower limb cannot be treated as the functional disability in relation to the whole body. In the opinion of this Court, the award of loss of future income on the assumption that the disability affecting earning capacity is 15% would suffice. The calculation on this score, thus, are made afresh.

8. As mentioned earlier, the claimant had not even indicated the nature of job he was carrying out in the private service. There is no strict proof adduced as to his salary or allowances. He, however, affirmed on oath and supported the claim by documents (Ex.PW1/108-111) to prove that he has studied upto 12<sup>th</sup> standard and attained a national trade certificate in the trade of instrument mechanic. Having regard to the minimum wages payable during the relevant period, his claim in his deposition that he was earning Rs.4,000/- per month from the private employer, thus, must be accepted.

9. The claimant was born on 26.10.1982 (matric certificate, Ex.PW1/109). Thus, on the date of the accident (28.12.2004) he was about 22 years and two months old in age. The loss of future earning is calculated on the multiplier of 18. The compensation payable under the said head is, thus, calculated as  $(4,000 \times 15 \div 100 \times 12 \times 18)$  Rs.1,29,600/- rounded off to Rs.1,30,000/-.

10. As mentioned earlier, the tribunal had awarded Rs.40,000/- as composite sum for loss of pay and amenities. It is improper to mix up the said two heads in the manner done. Thus, the amount of Rs.40,000/- included in the award by the tribunal is treated as damages for loss of amenities.

11. It is pointed out by the counsel for the appellant that the evidence shows that the claimant had remained under treatment from 28.12.2004 to 10.01.2006 for about one year and could not resume duties with his employer. In these circumstances, the loss of income for the said period is additionally granted at (4,000 x 12) ₹48,000/-.

12. The counsel for the claimant submits that the tribunal should also have kept in mind that the claimant was a bachelor, and, as a result of the permanent handicap suffered, there is loss of marriage prospects, also suffered and it merited damages to be awarded. Having regard to the facts and circumstances of the case, the date of accident and the nature of injuries/handicap suffered, the award in the sum of Rs.25,000/- for loss of marriage prospects is added.

13. In above view, the total compensation in the case comes to (1,63,540 + 1,30,000 + 48,000 + 25,000) ₹3,66,540/- rounded off to Rs.3,67,000/-. It is directed that the enhanced award shall also carry interest as levied by the tribunal. The award is modified accordingly. The insurer is directed to pay the requisite amount in terms of the modified award, after adjusting the amount already paid, by a requisite deposit with the tribunal within 30 days making it available to be released to the claimant.

14. The appeal is disposed of in above terms.

15. *Dasti.*

**R.K. GAUBA**  
**(JUDGE)**

**MAY 18, 2016/VLD**