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

Date of Decision: 01.06.2016

+ **MAC.APP. 87/2008**

DEVINDER SINGH

..... Appellant

Through: Mr. Nitinjya Chaudhary and Mr.
Rajiv Kumar Trivedi, Advocates

versus

UNITED INDIA INSURANCE CO. LTD.
AND ORS.

..... Respondents

Through: Mr. P.R. Sikka and Mr. Amit Sikka,
Advocates

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellant, then aged 24 years, working as a Scientist (System Analyst) with National Informatics Centre, suffered injuries in a motor vehicular accident that occurred on 08.12.1995 involving negligent driving of a car bearing registration no.DL-3CE-7860 (offending vehicle), admittedly insured against third party risk with United India Insurance Co. Ltd. (first respondent) for the period in question. The injuries suffered included fracture of the shaft femur left, fracture of patella left alongwith fractured tibial condyle left alongwith wounds on both hands. He instituted

an accident claim case (petition no. 1045/2004, old no.54/1997) on 30.04.1997 impleading the said insurance company, driver and owner of the offending vehicle as respondents.

2. On the basis of the inquiry held, by judgment dated 30.10.2007, the Motor Accident Claims Tribunal (tribunal) upheld his case about injuries having been suffered due to negligent driving of the offending vehicle. The tribunal awarded total compensation in the sum of Rs.1,02,000/- which includes Rs.50,000/- towards pain and suffering, Rs.12,000/- towards expenses incurred on attendant charges, Rs.20,000/- each towards special diet and conveyance. It directed the insurance company to pay the said amount with interest at the rate of 9% p.a. from the date of filing of the petition till realization.

3. The present appeal was filed submitting grievance that the tribunal had not granted adequate compensation. At the hearing, the claimant presses for enhancement of the award by suitable compensation towards loss of income during the period of treatment, loss of future income on account of disability, medical expenses and non-pecuniary award of damages on account of loss of amenities of life.

4. During the arguments, it is shown from the record of the tribunal that the claimant / appellant had been examined by a board of doctors of the All India Institute of Medical Sciences (AIIMS) which had issued a disability certificate (Ex. PW3/2) on 08.01.1997 certifying that the claimant had become physically handicapped to the extent of 23% permanent impairment in relation to his left lower limb due to the above mentioned fractures and consequent one inch of shortening of the left lower limb. The claimant had

also proved during inquiry that he had to avail of leave of six months absence of duty on account of treatment. He proved through evidence that he was earning ₹6,616/- p.m. as salary from the employer with National Informatics Centre. He also proved documents relating to his treatment and medical expenditure incurred in that context, they being Ex. PW3/5 to 11. The tribunal declined to grant any compensation on account of loss of income during the period of treatment on the reasoning that there had been no actual loss since the claimant would have availed of leave from the office. It did not consider grant of any compensation on account of future loss of income consequent to the disability. The medical expenditure was claimed by the appellant to have been incurred to the extent of ₹2.5 Lakh. The tribunal, however, declined to grant any compensation under the said head for the reason the original bills and receipts had not been submitted on record. No award was made on account of loss of amenities of life due to disability suffered.

5. In the opinion of this court, the approach of the tribunal was erroneous. It may be correct that the claimant was in regular employment of National Informatics Centre and would have the privilege of taking leave of absence but then the leave account which he would have earned was not meant for being spent on treatment for injuries suffered in a motor vehicular accident. The leave account was available to him for being taken benefit for his own purposes and at his own discretion. The leave account is of value and any erosion for reasons not attributable to an employee resulting in corresponding loss must be compensated.

6. Further, the permanent disability having been proved to the extent of 23% in relation to the left lower limb even though there was no immediate loss of income on such account (since the claimant continued to be in the same service and on account of his qualifications earned even promotions), it cannot be ignored that the loss would eventually occur on account of handicap post-retirement from the service, which would occur normally at the age of 60 years. In these circumstances, loss of future income post-retirement would need to be taken care of.

7. The expenditure receipts towards treatment as submitted on record are indeed photocopies. But then, as pointed out by the counsel for the claimant, while introducing the said evidence, the appellant appearing as PW-3, had clarified that the originals were available with him which he had brought for perusal of the tribunal. The reference to inability to produce other documents of such nature, as appearing in the cross-examination relates to 'further expenses' and not the expenses for which the claimant was seeking reimbursement in the form of compensation. But, it is noted that the documents submitted during evidence (Ex.PW3/10 and Ex. PW3/11) show expenditure only to the tune of (₹35,626/- + ₹4,571/-) ₹40,197/-. The learned counsel for the claimant fairly conceded that he is unable to produce any other record showing any additional expenditure and thus, presses for reimbursement only to the extent of ₹40,197/-.

8. Having regard to the nature of injuries suffered and the reasons for disability as certified vide Ex. PW3/2, bearing in mind the job in which the claimant had been engaged, functional disability on account of permanent

handicap is assessed at 15% and, on that basis, loss of future income is to be calculated on the multiplier of 9, as would apply post-retirement.

9. For the foregoing reasons, the loss of income on account of injuries is calculated as ($\text{₹}6616 \times 6$) $\text{₹}39,696/-$. The loss of future income on account of functional disability to the extent of 15% on the multiplier of 9 works out to ($\text{₹}6616 \times 15/100 \times 12 \times 9$) $\text{₹} 1,07,179/-$. The medical expenditure has been calculated above to the tune of $\text{₹}40,197/-$. The award on account of loss of amenities of life due to disability is added in the sum of $\text{₹}20,000/-$.

10. Thus, the additional compensation is calculated as $\text{₹}39,696/- + \text{₹}1,07,179/- + \text{₹}40,197/- + \text{₹}20,000$) $\text{₹}2,07,072/-$. Adding this amount to the compensation awarded by the tribunal, the total compensation in the case is computed as ($\text{₹}2,07,072/- + \text{₹}1,02,000$) $\text{₹}3,09,072/-$, rounded off to $\text{₹}3,10,000/-$.

11. Needless to add, the amount of $\text{₹}25,000/-$ which was paid as interim compensation under Section 140 of the Motor Vehicles Act, shall be adjusted. The amount shall carry interest as levied by the tribunal.

12. The insurer is directed to satisfy the enhanced award by requisite deposit with the tribunal within 30 days, making it available to be released to the claimant.

13. The appeal is disposed of in above terms.

(R.K. GAUBA)
JUDGE

June 01, 2016
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