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

Date of Decision: 8th April, 2016

+ **MAC.APP. 88/2010**

NAND KISHORE SHARMA

..... Appellant

Through: Mr. Navneet Goyal, Adv.

versus

SANDEEP DAHIYA & ORS.

..... Respondent

Through: Mr. Manoj Ranjan Sinha and Ms.
Arpita Kumari, Advs. for R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellant had suffered injuries in a motor vehicular accident on 20.06.2004 involving rash driving of motor vehicle bearing registration No.HR 26D 0802 which was admittedly insured against third party risk with the third respondent (insurer) for the period in question. As a result of the injuries, which included fractures of the spinal cord (C5 and C6), the appellant has been rendered a case of quadriplegia having loss of sensation in the entire body below neck with no ability to move his limbs or control over the bladder or bowel movements, his disability having been proved before the motor accident claims tribunal (tribunal) to be 100% permanent in nature. On his accident claim case (suit No.158/2007) instituted on

11.01.2007, the tribunal, by judgment dated 21.11.2009 awarded compensation in the sum of Rs.42,84,360/- calculating it as under:

1.	Pain, shock & suffering	Rs.1,50,000/-
2.	Medical expenses	Rs.1,81,930/-
3.	Purchase of bed etc.	Rs.30,000/-
4.	Compensation for leaves	Rs.1,11,350/-
5.	Future loss of earnings	Rs.26,47,080/- (without interest)
6.	Payment already made for medical attendant	Rs.1,68,000/-
7.	Future expenditure on medical attendant	Rs.5,46,000/- (without interest)
8.	Future expenditure on physiotherapy, conveyance & special diet etc.	Rs.2,00,000/- (without interest)
9.	Loss of comfort, amenities, frustration etc.	Rs.2,50,000/-
	Total compensation	Rs.42,84,360/-

2. Except for the components indicated above where the interest was denied, the awards under the other heads were made by the tribunal to be subject to addition of interest at 9% per annum from the date of filing of the petition till realization. The insurer was directed to satisfy the award within the period specified.

3. The appellant came up with the appeal at hand seeking enhancement of the compensation on account of loss of future earnings on the ground that the entire income of the appellant was not taken into consideration. The claimant also submits that the award under the head of pain & suffering (Rs.1,50,000/-) is inadequate and further questions the denial of interest on the component of future loss of earnings.

4. During the pendency of the appeal the appellant was allowed opportunity to lead additional evidence in the course of which he examined Mr. Dharmpal Tanwar (AW1), Accounts Officer in the office of General

Manager (Finance) at IGI Airport, Terminal 1D (Palam), New Delhi, who proved the salary of the claimant on account of employment on the date of the accident in the capacity of Traffic Superintendant in Indian Airlines (collectively Ex.AW1/1).

5. The counsel for the claimant pointed out at the hearing that during the inquiry before the tribunal the last salary certificate (Ex.PW4/B) was produced which related to the month of February 2005, it indicating the salary and allowance to be in the total sum of Rs.25,659/-. The tribunal on that basis found that the components of the earnings on which the loss of future income had to be calculated were in the sum of Rs.11,030/-, other allowances (e.g. kit allowances etc) being personal in nature. The evidence on record shows that the accident having occurred on 26.04.2004, the appellant having been rendered permanently paraplegic, he was constrained to take voluntary retirement from service w.e.f. 20.09.2005. By the additional evidence brought on record (Ex.AW1/1), he seeks to show that on 20.06.2004, the date of accident, the total salary was Rs.17,433/-. The submission is that the calculation of loss of future earnings should have been made on such basis.

6. Having considered the submissions of both sides and the material on record, this Court is constrained to reject the plea of the claimant on above account. The salary certificate (Ex.PW4/B) was correctly taken into account by the tribunal and, on that basis, appropriate conclusions were drawn for calculation of the loss of future income. The last salary and allowances, the loss of which is to be compensated, was subjected to addition of the element of future prospects to the extent of 30% and rightly

so, keeping in mind the age of the claimant. It is noted that, in the exceptional circumstances of the present case, the tribunal adopted a higher multiplier (15) than what ordinarily had to be applied, to calculate the loss of income in future.

7. The award under the head of pain, shock and suffering in the sum of Rs.50,000/- is also found to be not inappropriate since, it must be noted, the tribunal has added another sum of Rs.2,50,000/- towards loss of comfort, amenities, etc. Put together both the said awards under non-pecuniary heads of damages take care of the rights of the claimant.

8. The tribunal, bearing in mind the observations of the Supreme Court in the judgment in *R. D. Hattangadi v. Pest Control (India) Pvt. Ltd.* 1995 ACJ 366, has taken appropriate view on the question of interest. The amount equivalent to loss of future earnings has come in the hands of the claimant in advance. He cannot claim interest over and above it, except for the delay, if any, in due compliance with the direction for the award to be satisfied.

9. In above view, no further relief deserves to be granted in the appeal at hand. It is consequently dismissed.

R.K. GAUBA
(JUDGE)

APRIL 08, 2016
VLD