$~3

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

Date of Decision: 21st April, 2016

\+ **MAC.APP. 107/2007**

ARVIND PATHAK

..... Appellant

Through Mr. Sunil Kumar Verma, Adv.

versus

PARSHANT KUMAR & ORS.

..... Respondent

Through Mr. A K Soni, Adv. for R-3

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellant, then 17 years old, a student of 12th standard, suffered injuries in a motor vehicular accident that occurred on 28.02.2004 on being hit by a motor vehicle described as delivery van No.DL 1LB 3687 (the offending vehicle) which was admittedly insured against third party risk with the third respondent. He filed an accident claim case (suit No.32/06/04) on 01.04.2004 seeking compensation under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) impleading the third respondent (insurer) as a party in addition to driver and owner of the offending vehicle. The tribunal held inquiry and thereafter passed the judgment dated 22.11.2006 awarding compensation in the sum of ₹6,51,400/- with interest, calculating it as under :

	(Rupees)
(i) Expenses for Future Treatment	3,24,000/-
(ii)Pain and Suffering	25,000/-
(iii)Reimbursement of Medical expenses	5,000/-
(iv)Special Diet	10,000/-
(v)Conveyance	5,000/-
(vi)Loss of Income	17,400/-
(vii)Loss of Future Income	2,40,000/-
(viii)Loss of Enjoyment and Amenities	25,000/-
Total Compensation	6,51,400/-

2. Since the liability to indemnify was admitted, the insurer was called upon to satisfy the award.

3. The appellant has come up in appeal seeking enhancement of compensation, his prime contention being that the fact of disability on his earning has not been properly assessed and that the award on account of pain & suffering and loss of amenities of life (which he states should have included loss of marriage prospects) is inadequate. He also submits that the expenses for future treatment do not take into account the need for continued expenditure since the artificial limb would need replacement and regular maintenance.

4. It is noted that in absence of any better proof, the tribunal assumed the income notionally at ₹2,900/- on the basis of minimum wages payable to an unskilled worker. Since the claimant was a matriculate, the minimum wages for such purposes should have been adopted at ₹3,310.90 rounded off to ₹3,311/- rather than those of an unskilled worker. Further, the fact that the claimant was 17 year old, the multiplier of 18 would apply rather than 16 as adopted by the tribunal.

5. The injuries suffered by the claimant resulted in amputation of the right upper limb below elbow. As per the disability certificate (Ex.PW1/6), the claimant was found by a board of doctors of Safdarjung Hospital to be disabled to the extent of 69% in relation to right upper limb. Undoubtedly, the disability is permanent in nature. The tribunal has taken the functional disability to the extent of 43%. The reasoning set out for this purpose (at internal page 12 of the impugned judgment) defies logic. The disability certificate was proved during the inquiry. No effort was made to seek expert or medical opinion as to the extent of effect on the earning capacity.

6. In the facts and circumstances, guidance can be taken from the percentage of loss of earning capacity in such like cases as prescribed in part II of the First Schedule appended to the Employees' Compensation Act, 1923. The third entry in the said part of the schedule relates to "amputation from 20.32 cms from tip of acromion to less than 11.43 cms below tip of olecranon". The table indicates the loss of earning capacity to be 70%. This squarely applies to the case at hand. Therefore, the loss of future income has to be computed accordingly.

7. The loss of monthly earning capacity being (3,311 x 70 ÷ 100) ₹2,318/-, the total loss of future income is calculated as (2,318 x 12 x 18) ₹5,00,688/- rounded off to ₹5,01,000/-.

8. There is merit in the submission of the appellant that award of only ₹3,24,000/-, proved to be the cost of artificial limb procured at that point of time, cannot be sufficient. The artificial limb would undoubtedly need to be replaced and/or maintained during the remaining life of the claimant.

The learned counsel for the appellant fairly agreed that for this purpose, a corpus of similar amount additionally granted for future purposes should suffice. Therefore, an amount of ₹3,24,000/- needs to be added under the said head, which, of course, would be available for utilization only upon the proper advise being given by concerned medical authorities.

9. Having regard to the view taken in *Neerupam Mohan Mathur v. New India Assurance Co.* (2013) 14 SCC 15, compensation under the heads of pain & suffering and loss of amenities of life needs to be enhanced to ₹1 lakh and ₹2 lakhs each.

10. Since award for the loss of income for a period of six months, it representing the period for which the claimant remained under treatment, was also made on the basis of minimum wages adopted by the tribunal, it needs suitable correction. On the minimum wages of ₹3,311/-, the loss of income at that point of time comes to ₹19,866/- rounded off to ₹20,000/-.

11. Besides the above, the tribunal had also granted compensation under the heads of reimbursement of medical expenses, special diet and conveyance, in the total sum of ₹20,000/-, which is maintained.

12. With above improvements, the total compensation payable in the case comes to (6,48,000 + 1,00,000 + 20,000 + 20,000 + 5,01,000 + 2,00,000) ₹14,89,000/-.

13. Having regard to the fact that the compensation under the head of loss of future income resulting in payment being given in advance, there shall be no interest levied on that part of the award for the period the claim petition remained pending before the tribunal. Thus, in calculating the total

compensation, the period 01.04.2004 to 24.11.2006 shall be excluded for computing the effect of interest against said head of compensation.

14. It is noted that the tribunal did not make any provision for protection of the corpus of the award granted in favour of the claimant. In this view, it is directed that the entire enhanced portion of the compensation shall be kept in fixed deposit receipt for a period of 10 years in favour of the claimant in an interest bearing account in a nationalized bank with right to draw monthly interest. The claimant is, however, at liberty to approach the tribunal for premature release of such portion of the awarded compensation as may be required by him for further treatment including replacement of artificial limb, maintenance, etc.

15. Subject to the above, the award is modified accordingly.

16. The insurer is directed to deposit the enhanced portion of the compensation with the tribunal within 30 days of today whereupon it shall be released in terms of above directions.

17. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 21, 2016
VLD