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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 2nd February, 2016

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MAC.APP. 207/2010

LT BS BAMHRAH

..... Appellant

Through: Ms. Avnish Ahlawat, Mr. Girish
Kumar and Ms. Latika Chaudhry,
Advs.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Amit Mahajan, CGSC and
Mr. Krishanu Barua, Advs.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellant was commissioned in Indian Army in 1982. On 25.10.1983, when he was serving in the rank of second lieutenant, he was deputed to participate in 4th Himalayan Car Rally as member of the service team for 33 Mechanised Division. He was, thus, present in the army vehicle make Jona 4 x 4 BA 83B 21636 driven by Captain P S Grewal. The passengers in the said vehicle included two army jawans and another officer lieutenant Pradeep Joshi and the appellant. During the said journey, the vehicle slipped into a 50 meter deep gorge near Ranikhet. As a result of this accident, two jawans died on the spot besides injuries to others. The appellant suffered extensive injuries and

was rendered unconscious. He received treatment in army hospital facilities. Though he survived, he was rendered paraplegic and eventually boarded out, as medically unfit (100% disabled) from army service on 23.06.1984.

2. The father of the appellant pursued the matter of compensation and damages initially with the army authorities and later by a civil suit registered as Civil (OS) No.1070/98 filed for damages in this Court. The suit was dismissed as time barred by a learned Single Judge by judgment dated 23.05.2000. An appeal was preferred, registered as RFA(OS) No.48/2000, which was also disposed of on 01.04.2008 on the basis of submissions on the part of the appellant that he had been advised to instead pursue the matter under Section 166 of Motor Vehicles Act, 1988 (“MV Act”). Thus, a claim petition was preferred before Motor Accident Claims Tribunal (“the Tribunal”) at New Delhi on 01.05.2008, registered as suit No.457/2008. The Union of India was impleaded as the sixth respondent, besides other authorities and individuals.

3. The Tribunal accepted the evidence that the appellant had suffered injuries and had been rendered disabled to the extent of 100%, on account of the motor vehicular accident that had occurred on 25.10.1983 involving the army vehicle. It also accepted the evidence that, *inter alia*, on the basis of the opinion of the medical boards constituted by the army authorities, he was discharged from army service prematurely in 1984. The opinion that his disability is to the extent of 100%, rendering him in vegetative state was affirmed over and

over again by several medical boards, the last being the one constituted on 21.09.1999.

4. The Tribunal by judgment dated 21.12.2009 awarded compensation in the sum of ₹12,74,800/- with interest at 12% per annum from the date of filing of the claim petition till realisation. The breakup of the compensation thus computed appears (at internal page 26) in the impugned judgment as under :

Non-Pecuniary damages:

1. Pain, shock and suffering	:	Rs.1,50,000/-
2. Special diet, physiotherapy etc.	:	Rs. 50,000/-
3. Conveyance, expense on attendant etc.	:	Rs. 50,000/-
4. Loss of amenities	:	Rs.2,00,000/-

Pecuniary damages:

5. Loss of salary	:	Rs.7,12,800/-
6. Expense on Attendant from 1984 to 1988	:	Rs. 1,12,000/-
Total compensation	:	Rs.12,74,800/-

5. Feeling aggrieved with the compensation awarded, the appeal at hand was preferred praying for enhancement.

6. Having heard both sides at length and having gone through the record of the Tribunal, this Court finds that there is substance in the grievance that the compensation awarded is not adequate, just or sufficient. This needs elaboration.

7. The Tribunal accepted the evidence of the appellant that at the time of the accident he was in receipt of salary in the sum of ₹2,200/- per month. Having regard to the law laid down in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, the contention that the salary would have risen over the period, *inter alia*, on the basis of various Central Pay Commissions, was not accepted, and rightly so, in view of observations of Supreme Court to following effect:-

“45. The assumption of the appellants that the actual future pay revisions should be taken into account for the purpose of calculating the income is not sound. As against the contention of the appellants that if the deceased had been alive, he would have earned the benefit of revised pay scales, it is equally possible that if he had not died in the accident, he might have died on account of ill health or other accident, or lost the employment or met some other calamity or disadvantage. The imponderables in life are too many. Another significant aspect is the non-existence of such evidence at the time of accident.

46. In this case, the accident and death occurred in the year 1988. The award was made by the Tribunal in the year 1993. The High Court decided the appeal in 2007. The pendency of the claim proceedings and appeal for nearly two decades is a fortuitous circumstance and that will not entitle the appellants to rely upon the two pay revisions which took place in the course of the said two decades. If the claim petition filed in 1988 had been disposed of in the year 1988-89 itself and if the appeal had been decided by the High Court in the year 1989-90, then obviously the compensation would have been decided only with reference to the scale of pay applicable at the time of death and not with reference to any future revision in pay scales.”

8. Noticeably, in face of facts set out earlier, the claim petition itself was filed highly belatedly, twenty five years after the accident.

9. The Tribunal followed the formula commended in *Sarla Verma* (supra), which was later reiterated by a bench of three Hon'ble Judges of the Supreme Court in *Reshma Kumari & Ors. Vs. Madan Mohan & Anr.*, (2013) 9 SCC 65 and computed the loss of income by adding the element of future prospects of increase by 50% and adopting the multiplier of 18, inasmuch as the appellant was 23 years old when he suffered the injuries, and calculated the loss of salary at ₹7,12,800/-. Whilst the formula applied cannot be faulted, error has crept in on account of adopting the salary of ₹2,200/- per month as the basis of the multiplicand. It escaped the attention of the Tribunal that the salary was not the only perk received by the appellant on account of army service. He was also entitled to free rations and an attendant for his assistance. Whilst the claim on account of attendant has been separately dealt with, the privilege in the nature of free rations, though computed in the sum of ₹2,48,930/- by the claimant, was not factored in for the final analysis.

10. This Court finds substance in the submission now made by the learned counsel for the appellant that since the value of free rations was mentioned on the basis of the value of the said privilege at the relevant point of time, it being a regular source of support which can be translated in terms of money it needs to be factored in as an element to the regular income to compute the loss of earning. She explained on the basis of pleadings and material on record that the value of the free rations during the relevant period was ₹18/- per day. By this reckoning, the value of the perk receivable by the appellant at the time of his discharge from army service was in the minimum ₹540/- per month. This needs to be added to the salary of ₹2,200/- for calculating the loss of income. Adding the element of future prospects of increase, the loss

of monthly income works out to ₹4,110/-. Thus, the total loss of income works out to $(4110 \times 12 \times 18)$ ₹8,87,760/-, rounded off to ₹9 lakhs.

11. The Tribunal awarded ₹1,12,000/- on account of expenses on attendant from 1984 to 1988 denying any benefit for the future, observing vaguely that expenditure on such account for the future had been granted by the army authorities. During the course of hearing, it was explained, and the learned counsel for the respondents did not refute the argument, that the appellant had been granted ₹60/- per month as the constant attendant allowance at the time of discharge from army service. The learned counsel for the appellant fairly agreed that this constant attendant allowance has been increased over the years and is now paid at ₹4,500/- per month, in addition to the disability compensation, in terms of recommendations of the Sixth Pay Commission. Having regard to this allowance, it cannot be said that the army authorities have taken due care of the needs of the appellant for expenditure on a regular attendant in entirety.

12. There is no dispute that given the medical state in which the appellant has been placed on account of accidental injuries, he cannot move around or take care of his personal needs except with the help of a constant attendant. A regular attendant has, thus, to be engaged and placed at his disposal round the clock. In absence of any other benchmark, it can be safely said that an attendant will not be available for such services to be given unless he is paid at least the minimum wages payable to an unskilled worker. The appellant was invalided out of army in 1984. The minimum wages payable at that point of time were ₹300 per month. The minimum wages to an unskilled worker in

the present times are in the range of ₹9,178/- per month. By this reckoning in the name of constant attendant, the appellant is receiving virtually half of the financial support for the expenditure he actually requires to incur. It has to be borne in mind that an attendant cannot be at his beck and call round the clock. In these circumstances, he deserved to be granted the minimum wages payable to an unskilled worker, over and above the constant attendant allowance that he is receiving from the army authorities.

13. The attendant charges may also be conveniently calculated in the same manner as done in the context of loss of future income. Adopting the multiplier of 18, adding the element of future prospects to the extent of 50%, the cost of engaging an attendant works out to (450 x 12 x 18) ₹97,200/- rounded off to ₹1 lakh. This would be payable in addition to the expenses on account of attendant from 1984 to 1988, as already granted and, thus, the total compensation payable towards expenses on attendant comes to ₹2,12,000/-.

14. The Tribunal awarded ₹50,000/- each as non-pecuniary damages describing it as awards on account of special diet, physiotherapy etc. on the one hand and conveyance and expenses on attendant etc. on the other. The expression “etc.” makes the award rather vague.

15. The learned counsel for the appellant submitted that since he is rendered wholly dependent, a physiotherapist needs to be engaged on daily basis for toning up of his muscles and keeping him in a position as fit as possible. She also submitted that the appellant had suffered loss of speech and a speech therapist also requires to be engaged on daily basis. She submitted that these physiotherapists come at a cost of ₹400/- to

₹450/- per day. Except for the oral statement, there is no material in the nature of medical advice for any such expenditure. Be that as it may, the need of physiotherapy and special diet cannot be denied. In absence of formal proof of actual expenditure on these heads, this Court finds scope for some improvement over the award granted by the Tribunal.

16. Similarly, the award of ₹50,000/- on account of conveyance was justified by the Tribunal with vague reasoning that the family needs to spend on the transportation of the appellant and his attendant and cannot avail of public transport for such purposes. Having regard to costs involved, the award on conveyance also needs to be enhanced.

17. Whilst the award on account of pain, shock and suffering in the sum of ₹1,50,000/- and on account of loss of amenities in the sum of ₹2 lakhs seem to be just and proper [*R.D. Hattangadi v. Pest Control (India) Pvt. Ltd. & Ors.* (1995) 1 SCC 551], this Court does find merit in the contention that there were certain other heads of non-pecuniary damages which also should have been considered and duly awarded.

18. The appellant suffered injuries and disability at the age of 23 years. He was not married at that time. It is obvious that the paralytic state that he has been put to killed all chances and prospects of he entering matrimony. The loss of marital prospects, thus, must be compensated. This element could not have been included in the loss of amenities as done by the Tribunal. In addition to this, the loss of expectancy of life also deserved due compensation, which was not even considered by the Tribunal.

19. Having regard to the facts and circumstances of the case, non-pecuniary damages in the sum of ₹1,50,000/- on account of pain, shock and suffering, ₹2 lakhs on account of loss of amenities, ₹1 lakh on account of special diet, ₹1 lakh on account of expenditure towards physiotherapy, ₹1 lakh on account of conveyance, ₹1 lakh on account of loss of marriage prospects and ₹1 lakh on account of loss of expectancy of life, totalling to ₹8,50,000/- seem to be just, fair and adequate compensation.

20. Adding the loss of income worked out at ₹9 lakhs, and expenses towards attendant for future at ₹2,12,000/-, the total compensation comes to ₹19,62,000/-.

21. The impugned award is, thus, modified. The appellant is also entitled to compensation in the sum of ₹19,62,000/- with interest as levied by the Tribunal.

22. The Tribunal did not make any arrangement for protection of the corpus of compensation awarded in terms of the directions in *Kerala State Road Transport Corporation V. Susamma Thomas* (1994) 2 SCC 176. The amount of compensation awarded by the Tribunal has already been released to the appellant by the respondents. The respondents are directed to pay the enhanced portion with up-to-date interest in terms of aforementioned directions within 30 days by depositing it with the Tribunal in the form of appropriate instrument. The Tribunal shall take care to release the said amount by putting it in an interest bearing fixed deposit account in a nationalised bank in the name of the appellant for a period of seven years, with liberty to the appellant, or his authorised representative, to draw monthly interest therefrom.

23. If so required, the appellant shall be entitled to enforce the award by taking out appropriate execution application before the Tribunal, in accordance with law.

24. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

FEBRUARY 02, 2016
VLD