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

Date of Decision: 23.05.2016

\+ MAC.APP. 326/2014

ANSAMMA SABU & ANCY SABU ..... Appellant

Through: Mr. Navneet Goyal, Adv.

versus

RAVI KUMAR RANA AND ORS ..... Respondents

Through: Mr. P. Acharya, Adv. for R-3.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellant, trained as a nurse, then aged 43 years, suffered injuries in a motor vehicular accident that occurred on 30.03.2011 on account of negligent driving of bus bearing registration No. DL 1PC 7394 (offending vehicle) of Delhi Transport Corporation (DTC), admittedly insured against third party risk for the period with United India Insurance Co. Ltd. (insurer). She filed an accident claim case (Suit No. 585/2011) on 03.06.2011 seeking compensation impleading DTC, insurer and driver of the offending vehicle as respondents.

2. The motor accident claims tribunal (tribunal) held inquiry and, by judgment dated 16.11.2013, upheld the case that she had suffered injuries

and permanent disability on account of negligent driving of the offending vehicle and compensation in the sum of ₹ 15,48,561/- was awarded with interest @ 9% per annum in her favour with direction to the insurer to pay. The compensation was calculated as under:-

S.No.	*Description*	*Amount*
1	*Compensation for medical expenses*	*Rs. 52,145/-*
2	*Compensation forpain &suffering*	*Rs. 1,00,000/-*
3	*Compensation for special diet and Conveyance*	*Rs. 50,000/-*
4	*Compensation for loss of income During Treatment*	*Rs. 75,000/-*
5.	*Compensation for loss of future income*	*Rs. 8,71,416 /-*
6	*Compensation for loss of amenities And enjoyment of life*	*Rs. 1,00,000/-*
7.	*Compensation for disfigurement*	*Rs. 50,000/-*
8.	*Compensation for attendant charges*	*Rs. 2,50,000/-*
	Total	*Rs. 15,48,561/-*

3. The claimant has come up in appeal submitting that the compensation for loss of future income was not properly calculated and that the awards under the heads of pain & suffering, loss of amenities and enjoyment of life are inadequate.

4. It is noted that the tribunal considered the evidence about disability thus:-

> 13. *Petitioner in her affidavit of evidence Ex. PWl/A stated that after accident she was removed to AIMS trauma center. As per discharge summary mark A (collectively from 1 to 7), petitioner is found to have suffered fracture injuries in both the legs and operated for debridement and external fixature applied on 18.04.2011 and thereafter STSG.B/L lower limbs on 30.04.2011. As per the OPD cards, petitioner remained under*

treatment till 09.07.2011 with AIIMS trauma center. During, proceedings petitioner was examined for ascertainment of disability at Madan Molian Malviya hospital on the direction of this Tribunal. Medical board of the hospital after examining the petitioner issued disability certificate Ex. PW2/A opining that petitioner received 88% disability with respect to right upper limb as well as both lower limbs and the said deformity is found permanent in nature and not likely to be improved. PW2 Dr. Jogender Kumar who examined tlie petitioner also stated that due to this disability petitioner will have difficulty in her day to day activities including sitting, squatting, running and walking and there will be difficulty in performing jobs which require movement of lower limbs. Thus, It is clear that petitioner suffered grievous fracture injuries in both legs resulting in permanent disability to the extent of 88%.

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*18. **Loss of future income**: As per disability certificate, petitioner suffered 88% disability in relation to "right upper imb and both lower limbs" which are not likely to improve and non progressive. PW2 Dr. Jogender Kumar in his testimony categorically stated that it is difficult for petitioner to perform job which require movement/ ambulation of both lower limbs. Petitioner is found to be working as nurse and as a nurse she requires the movement of legs to perform her duty. Definitely the present nature of disability, substantially hampered her career as a nurse, therefore the percentage of loss of earning capacity is assessed @70%. ……..”*

5. Having regard to the nature of job for which the claimant has been trained, this Court agrees with her submission that the assessment of disability to the extent of 70% only was incorrect. Since three of her upper limbs have been impaired, they including the right upper limb as would be necessary in almost all nursing duties which she is expected to perform, the functional disability should have been assessed to the extent of 88% in accordance with the medical opinion.

6. Thus, since the income of the claimant was notionally assessed at minimum wages of skilled worker (with her consent) at ₹ 7,410/-, the loss of future income on account of permanent disability to the extent of 88% would calculate as (7410 x 88÷100 x 12 x 14) ₹ 10,95,494/-.

7. Having regard to the nature of injuries and the extent of disability suffered, the compensation on account of pain & suffering on one hand and for loss of amenities and enjoyment of life are increased to ₹ 1,50,000/- each.

8. Thus, the total compensation in the case is calculated as (52,145 + 1,50,000 + 50,000 + 75,000 + 10,95,494 + 1,50,000 + 50,000 + 2,50, 000) ₹ 18,72,639/-, rounded off to ₹ 18,73,000.

9. The award is modified as above. Needless to add, it shall carry interest as levied by the tribunal.

10. The insurer is directed to deposit the enhanced portion of the compensation with interest with the tribunal within 30 days. It is directed that the entire enhanced portion of the compensation with interest shall be released to the claimant in the form of fixed deposit receipt in a nationalized bank of his choice for a period of 5 years with right to draw monthly interest.

8. The appeal is disposed of in above terms.

(R.K. GAUBA)
JUDGE

MAY 23, 2016/nk