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

Date of Decision: 19th January, 2016

+ **MAC.APP. 134/2005**

DR. B. C. JAIN

..... Appellant

Through: Ms. Aruna Mehta, Adv.

Versus

RAJINDER & ORS.

..... Respondents

Through: Mr. Shoumik Mazumdar and Mr.

Pankaj Seth, Advs. for R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellant, then 60 years old, working as an orthopaedic surgeon in private medical practice suffered injuries in a motor vehicular accident at 10 AM on 21.04.1996 near the junction of roads at Madhuban Chowk, outer Ring Road, Delhi. At the relevant point of time, he was driving two wheeler scooter DL-8S-D-5432, which was hit by Maruti van DL 5C 1848 (“the offending vehicle”). The injuries sustained by the appellant are stated to include broken ribs and fracture of upper left limb. He filed a claim petition under Section 166 of Motor Vehicles Act, 1988 (“the MV Act”) on 15.11.1996 claiming compensation in the sum of ₹10 lakhs impleading the owner and driver of the offending vehicle as the first and second respondent and the insurer as the third respondent. The petition was contested by the driver and the insurer through their respective written statements. It was

enquired into and adjudicated upon by the motor accident claims tribunal (“the tribunal”) through judgment dated 31.01.2004 whereby compensation in the sum of ₹36,000/- with interest at 9% per annum from the date of the filing of the petition till realisation was awarded. Since the offending vehicle was found to be insured, the insurance company (the third respondent) was directed to pay the awarded amount. Feeling aggrieved with the compensation thus awarded, the present appeal under Section 173 of the MV Act has been preferred.

2. It may be mentioned here that in the course of considering the evidence adduced during inquiry, the Tribunal concluded that the appellant had failed to prove any permanent disability. No compensation was ordered for loss of future earnings. No compensation was awarded for loss of income for the period the appellant had remained incapacitated to pursue his normal course of life or medical practice. The Tribunal found that the appellant had proved medical expenses to the tune of ₹23,799/- which was rounded off to ₹24,000/-. It assessed the loss on account of pain and agony at ₹7,000/- and also found it just and proper to award ₹5,000/- as compensation for future physiotherapy treatment. Thus, the total compensation awarded was calculated at ₹36,000/-.

3. The appellant, through the appeal at hand, insists that he had suffered permanent disability. During the pendency of the appeal, he approached the medical board of Hindu Rao Hospital again in October, 2009 and secured a certificate (Ex.AW-1/A) affirming that he suffers from periarthrititis in his left shoulder and his disability is permanent to the extent of 20% of the upper limb. This certificate is pressed in aid of

the claim of permanent disability suffered as a result of injuries sustained in the accident which is the subject matter of the case, in addition to and continuation of the disability certificate (Ex.PW-1/1) dated 14.07.2001 which was produced in evidence through Dr. S C Jain (PW-1), again of Hindu Rao Hospital during the inquiry before the Tribunal.

4. It may be mentioned that in the said certificate dated 14.07.2001 (Ex.PW-1/1), the medical board of Hindu Rao Hospital had opined that the appellant, then aged 65 years, was suffering from periarthritis of left shoulder with restricted movement and pain, the disability being temporary to the extent of 18% of the left lower limb.

5. On the application of the appellant (CM No.16685/2012) under Order 41 Rule 27 CPC he was allowed, by order dated 21.09.2012, to produce additional evidence at the stage of this appeal, with liberty to the insurance company, the only contesting respondent, to have a right of rebuttal. In exercise of the liberty thus granted, the appellant examined Dr. Arun Yadav (AW-1) on 12.03.2013 to prove the certificate (Ex.AW-1/1) obtained on 05.10.2009. AW-1 was cross-examined on behalf of the insurance company, though no further evidence has been led by either side against the said backdrop.

6. On careful appraisal of the evidence adduced during the enquiry before the Tribunal, and the additional evidence led during the pendency of this appeal before this Court, this Court is of the considered opinion that the appellant has failed to prove any permanent disability having been suffered as a result of the injuries sustained in the motor vehicular accident which was the subject matter of the proceedings before the

claims Tribunal leading to the impugned judgment. As observed earlier, the certificate obtained in 2001 (Ex.PW-1/1) clearly showed that the appellant, examined by the board of doctors, five years after the accident, had been found to be suffering with restricted movement and pain in the left shoulder though there was no disability affirmed in such regard. The only disability certified was in relation the left lower limb which was to the extent of 18%, that too temporary in nature. Since there was no allegation that the appellant had suffered any injuries in the left lower limb in the accident, the temporary disability certified in relation to the said part of the body on 14.07.2001 is immaterial and irrelevant. It may further be noted that even while affirming the certificate dated 14.07.2001 (Ex.PW-1/1), Dr. S C Jain (PW-1) had expressed lack of clarity as to whether the disability thus certified was on account of post trauma or on account of old age. Thus, there was no co-relation between the injuries suffered in the accident and the disability sought to be proved.

7. The certificate dated 05.10.2009 (Ex.AW-1/1) proved as additional evidence through AW-1 before this Court is too remote in time to the accident in question which had occurred on 29.04.1996. There is nothing brought in to prove and establish that the disability noticed in 2009 is on account of injuries which were sustained 13 years ago in April, 1996. Mere say-so of AW-1, that it is unlikely that the appellant would have suffered any other injuries during 2001-09 cannot exclude the possibility of other factors having supervened after the accident on 21.04.1996.

8. While the claim of the appellant for loss of future income on account of permanent disability cannot be upheld for the above reasons, there is substance in the grievance that the loss of income in the wake of the accident should have been considered and duly compensated. The learned counsel for the appellant has drawn attention of this Court to the evidence of Dr. P K Bhardwaj (PW-3) who affirmed on oath before the Tribunal that the appellant had remained under treatment with him as an indoor patient in Bhagwan Mahavir Jain Hospital during 21.04.1996 to 26.04.1996 and thereafter as indoor patient till October, 1996. This proved that the appellant, given the age at which he suffered the accident, had remained pre-occupied with treatment and, thus, would have not been in a position to continue with his medical practice at least for a period of six months. Thus, loss of earnings for the said period had to be compensated.

9. The appellant had claimed that he was earning ₹11,000/- per month from his medical practice. He, however, placed on record the intimation under Section 143 of the Income Tax Act, 1961 (Ex.P-11) dated 18.12.1996 which pertains to assessment year 1996-97 (corresponding to financial year 1995-96). Since this document provides sufficient indication of the income in the preceding financial year, it can safely be accepted as the proof of the income of the appellant at the relevant point of time. The income returned for the said financial year, as per the aforementioned document, was ₹80,180/- which would mean the appellant was earning in the region of ₹6,682/- per month. Thus computed, the loss of earnings for the period of six months would work out to ₹40,092/- (rounded off to ₹40,000/-).

10. The learned counsel for the appellant has submitted that award should have included compensation on account of special diet, conveyance and loss of amenities which were not considered by the Tribunal. While there is no case made out for compensation on account of loss of amenities as no disability is proved, having regard to the fact that the accident had occurred in 1996, compensation on account of special diet and conveyance @ ₹5,000/- each appears to be just and proper.

11. For the foregoing reasons, the compensation awarded by the Tribunal is increased by ₹50,000/- (₹40,000/- on account of loss of income, ₹5,000/- for special diet and ₹5,000/- on account of conveyance).

12. It is noted that the appeal was preferred in 2005 and has taken 11 years to be adjudicated upon. Going by the proceedings recorded over the period, the appellant will have to share most of the blame for the delayed conclusion of the proceedings. In these circumstances, the additional compensation of ₹50,000/- hereby awarded shall carry an interest of 9% per annum from the date of this order till realisation. Needless to add that the insurance company will be liable to pay the additional sum within a period of 30 days.

13. The appeal is disposed of with above observations and directions.

R.K. GAUBA
(JUDGE)

JANUARY 19, 2016
VLD