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

Date of Decision: 29th March, 2016

+ **MAC.APP. 460/2012**

MONTU SINGH

..... Appellant

Through Mr. O P Mannie and Mr. Manish Maini, Advs.

versus

VINOD KUMAR YADAV & 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 had suffered injuries in a motor vehicular accident that occurred at about 1.30 PM on 27.11.2009 involving a collision between a motorcycle bearing registration No.DL 9SM 5467 (motorcycle) driven by him on one hand and a water tanker bearing registration No.DL 1GB 6819 (offending vehicle) on the other. There were two other persons travelling on the motorcycle, each of whom suffered injuries, one (Suresh) dying in the result. Three claim petitions were brought before the motor accident claims tribunal (tribunal) including one (MACT case No.34/2010) preferred by the appellant on 05.02.2010. All the three cases were inquired into and decided by a common judgment dated 12.08.2011.

2. On the petition of the appellant, compensation in the sum of ₹1,06,400/- was granted, it having been calculated thus :

a)	Medicines & Treatment	=	Rs. 10,000/-
b)	Loss of Income	=	Rs.26,400/-
c)	Pain and Suffering	=	Rs. 50,000/-
d)	Conveyance & Special Diet	=	Rs. 20,000/-
	<u>TOTAL</u>	=	<u>Rs.1,06,400/-</u>

(Rupees One Lac Six Thousand Four Hundred Only)

3. Since the offending vehicle was insured against third party risk for the period in question, the third respondent herein (the insurer) was directed to satisfy the award.

4. The appellant has come up in appeal seeking enhancement of the compensation, *inter alia*, pleading that he had suffered permanent disability. Since no evidence was adduced to this effect before the tribunal, the claimant having pleaded that he was able to procure necessary confirmation by disability certificate later, on his request under Order 41 Rule 27 of Code of Civil Procedure, 1908 (CPC), he was allowed to lead additional evidence during the pendency of the appeal. Pursuant to the said liberty granted, he examined Dr. K. K. Kumra (PW1), Chief Medical Officer of Deen Dayal Upadhyay Hospital of Govt. of NCT of Delhi to prove the disability certificate dated 07.04.2012 (Ex.PW1/1) affirming that the appellant suffers from post traumatic stiffness of right hand with permanent disability of 43% of right upper limb.

5. The main ground pressed in appeal by the claimant is for award of compensation towards loss of future income on account of permanent disability. The counsel for the claimant further submitted that the claimant also deserves award under the head of loss of amenities of life due to disability.

6. During the inquiry before the tribunal it was proved that the appellant had suffered fracture of shaft of right humerus and fracture of fourth metacarpal bone of the right upper limb. It was also proved that he had to undergo a surgical procedure wherein a steel plate was initially inserted and bone grafting done. The disability certificate (Ex.PW1/1) shows that he has suffered permanent adverse effect on the use of the said right upper limb as the post traumatic stiffness would restrict the movement rendering him disabled to the extent of 43% in relation to the said part of the body.

7. The moot question to be addressed in these circumstances is as to what would be extent of functional disability resulting from the said permanent disability of the right upper limb. On perusal, it is found that in the petition, the appellant had stated that he was engaged in a private job earning Rs.6,000/- per month. This was the line he took when he tendered his evidence through affidavit (Ex.PW2/A). Noticeably, he would not clearly describe the nature of job in which he was engaged. Since he was unable to prove the nature of avocation or the earnings resulting therefrom, the tribunal assumed his income on the basis of minimum wages of Rs.4,377/- rounded off to Rs.4,400/-.

8. It is in the appeal for the first time that the claimant stated that he was engaged in the job of a foreman/machine operator. Though he has brought in the medical opinion through AW1 about the extent of disability, he did not offer any evidence to strictly prove such nature of avocation or the effect of disability on the job he is required to perform to earn his livelihood. Having regard to the overall facts and circumstances, in the considered opinion of this Court, the functional disability may be assessed to the extent

of 20% in relation to the whole body and on that basis the loss of future income can be compensated. As per the disability, the claimant was 29 years old in April, 2012. Since the accident had occurred in November, 2009, he would have been over the age of 26 years at the relevant point of time. Thus, while assessing the loss of future income the multiplier of 17 deserves to be adopted.

9. The loss of income on account of disability (20%) would be $(4400 \times 20 \div 100)$ Rs.880/-, thus, the total loss of future income is computed at $(880 \times 12 \times 17)$ Rs.1,79,520/- rounded off to Rs.1,80,000/-. Having regard to the facts and circumstances, an amount of Rs.30,000/- is added towards loss of amenities of life. Thus, the compensation awardable in the case is enhanced by Rs.2,10,000/-.

10. Needless to add, the enhanced portion of the compensation shall carry interest at the rate of 9% per annum from the date of filing of the petition till realization. The insurer is directed to deposit the enhanced portion of the compensation with the tribunal within 30 days whereupon it shall be released to the claimant after being invested in fixed deposit receipt in a nationalized bank in his name initially for a period of seven years with right to draw monthly interest.

11. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 29, 2016
VLD