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

Date of Decision: 29th March, 2016

\+ **MAC.APP. 487/2012**

SMT PREM KANTA JAIN

..... Appellant

Through Mr. Manish Maini and Ms. Hreeshika Bhargava, Advs.

versus

DEEPAK THAPA & ORS

..... Respondent

Through Mr. S Ghosh, Adv. for R-3

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellant, then aged 65 years, suffered injuries in a motor vehicular accident that occurred at about 8.46 AM on 21.04.2008 while riding on the pillion of scooter bearing registration No.DL 8S AJ 5939 (the scooter) driven by her husband when it was involved in a collision against car bearing registration No.DL 8C AJ 4240 (the car) which was insured against third party risk with the third respondent (the insurer) for the period in question. She preferred a claim petition before the motor accident claims tribunal (tribunal) on 19.05.2008 which was registered as MACT No.473/2008. Besides the insurer, the driver and owner of the offending car were also impleaded as party respondents.

2. On the basis of inquiry held, the tribunal granted compensation in the sum of Rs.11,96,830/- with interest in favour of the claimant calculating it as under :

1.	Compensation for pain &sufferings	: 70,000/-
2.	Compensation for expenses incurred on medical treatment	: 9,65,230/-
3.	Compensation for special diet	: 6,000/-
4.	Compensation for conveyance charges	: 5,000/-
5.	Compensation for Attendant Charges	: 48,000/-
6.	Compensation for loss of income	: 24,000/-
7.	Compensation for future loss of earning capacity due to disability	: 33,600/-
8.	Compensation on account of enjoyments of amenities of life	: 25,000/-
9.	Compensation on account of hardship, discomfort, inconvenience, Discomfort	: 20,000/-
	Total	Rs. 11,96,830/-

3. During the pendency of the inquiry, the claimant had mustered proof indicating that she had suffered 90% temporary disability, such certification (Ex.PW3/1) being subject to review after two years. By the time the claimant was able to secure a proper certificate about the effect of the injuries, the claim petition was decided by the tribunal by judgment dated 30.01.2012.

4. The present appeal was preferred by the claimant seeking enhancement of the compensation mainly contending that the disability suffered by her is permanent in nature. She has also sought increase in the compensation under the non-pecuniary heads of damages, namely, pain and

sufferings, loss of enjoyment of amenities of life and compensation on account of hardship, discomfort *etc*.

5. During the pendency of the appeal, the claimant moved as application (CM No.6762/2014) on the basis of which, by order dated 11.07.2014, the medical superintendent of Dr. Baba Saheb Ambedkar Hospital of the Govt. of NCT of Delhi was directed to constitute a medical board to assess the disability suffered, its nature and extent. Pursuant to the said direction, the appellant was examined by a medical board in the said hospital which has issued certificate dated 05.09.2014, that has been received and placed on record (page 43 of the paper book). As per the said certificate the appellant suffers from locomotive disability, she being an old operated case of B/L femur and B/L tibia with stiffness of B/L, hip, knee and ankle; the physical impairment being assessed to be permanent in nature to the extent of 87% in relation to both lower limbs.

6. The appellant had claimed before the tribunal that she was engaged in running a business in the name and style of M/s Prem Dying House & Nahar Enterprises, earning Rs.1,50,000/- per annum and was also paying income tax. She, however, was unable to prove any income tax returns or the fact that she was engaged in any such business. The tribunal having found that there being no cogent evidence adduced, her income was assessed notionally at Rs.2,000/- per month, she being treated as a housewife.

7. In the considered view of this Court, the said assessment was not a proper approach to the issue. In absence of any proof as to the educational qualifications or special skills acquired by the appellant, the income should have been assessed at least on the benchmark of minimum wages for an

unskilled worker. Since the accident had occurred on 21.04.2008, the loss of income during treatment and in future due to permanent disability deserves to be worked out at the rate of minimum wages of Rs. 3,633/-.

8. In the aforementioned facts and circumstances, the disability to the extent of 87% in relation to the lower limbs cannot be treated as disability in relation to the whole body. Given the fact that no proof of any specific effect has been adduced, the functional disability is assessed at 45% to calculate the loss of future income.

9. Since the tribunal found the initial period of treatment to be one year, it had granted the loss of income accordingly. The assessment of income now having been made at Rs.3,633/-, the said calculation is to be made afresh.

10. Thus, the loss of income during treatment is calculated as (3,633 x 12) Rs.43,596/- rounded off to Rs.44,000/-. The functional disability having been assessed to the extent of 45%, the loss of future income will have to be computed on the basis of (3,633 x 45 ÷ 100) Rs.1,635/- per month. Since the future income loss would accrue after the initial period of total immobility during treatment for one year, multiplier of 5 would apply (given the fact that she would have turned 66 by such time). Thus, the total loss of future income is calculated at (1,635 x 12 x 5) Rs.98,100/- rounded off to Rs.1,00,000/-.

11. Having regard to the nature of injuries suffered and the advanced age of the appellant on that point of time, the compensation for pain and sufferings is increased to Rs.1 lakh. In the considered view of this court, the

loss of enjoyment of amenities of life and the hardship, discomfort, inconvenience *etc*. suffered due to the injuries are indicative of similar facets. Given the sufficient award already made under such heads described separately, there is no good ground made out for any further increase.

12. Thus, the total compensation deserves to be increased by Rs.1,16,400/-. Needless to add it shall carry interest as levied by the tribunal. The insurer shall continue to be entitled to recovery rights against the driver and owner of the offending vehicle as already allowed by the tribunal.

13. 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 appellant by being deposited in her name in a nationalized bank for a period of three years along with a right to draw monthly interest.

14. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 29, 2016
VLD