$~R-47

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

Date of Decision: 7th April, 2016

\+ **MAC.APP. 441/2007 & CMNo. 11860/2007**

BHAGWAN SINGH ..... Appellant

Through: Mr. O.P. Mannie & Mr. Manish Mannie, Advs.

versus

DTC & ORS ..... Respondents

Through: Mr. Manoj Kumar for Ms. Aarti Mahajan Shedha, Adv. for R-1. Mr. Pradeep Gaur, Adv. for R-2

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellant, then aged 50 years, was employed as security guard in Priyadarshni Apartment at a salary of Rs. 3,000/- per month. On 15.10.2004, he suffered injuries due to rash driving of bus bearing registration No. DL 1PB 6249 (the offending vehicle). He filed an accident claim case under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act), which was registered as (Suit No. 33/2005) impleading Delhi Transport Corporation (DTC), the owner of the offending vehicle, and National Insurance Company Ltd. (insurer) as respondents.

2. After inquiry, the motor accident claims tribunal (the tribunal) by judgment dated 13.03.2007 awarded compensation in the total sum of Rs. 41,500/-, with interest from the date of filing of the petition till realization. Since the insurer had admitted the liability to indemnify under the insurance

policy taken out by DTC (the owner of the offending vehicle), it was asked to satisfy the award.

3. The award made by the tribunal includes Rs. 3,500/- towards medical expenses, Rs. 2,000/- each towards conveyance and special diet, Rs. 9,000/- towards loss of income and Rs. 25,000 towards pain & suffering. It may be added here that in the course of inquiry, the claimant had admitted that after the accident, he had secured another employment as security guard in Government school in Kalyanpuri though at a salary of Rs. 1,000/- per month. The tribunal noted that no permanent disability had been proved and thus, no award was made towards loss of future income.

4. By appeal at hand, the appellant seeks enhancement claiming that he has been rendered permanently disabled. He submitted a disability certificate dated 14.12.2006 (Ex. AW1/1). On his request under Order 41 Rule 27 of the Code of Civil Procedure, 1908(CPC) he was allowed to adduce additional evidence. He examined Dr. Harish (AW-1), one of the members of the board of doctors which had issued the disability certificate. According to this evidence, the appellant suffers permanent disability on account of delayed union of the facture of the right upper limb with stiff shoulder, the disability having been assessed to the extent of 44% in relation to the said upper limb.

5. By the appeal at hand, the appellant presses only for loss of future income on account of disability and loss of amenities to be compensated.

6. Having regard to the nature of avocation in which the appellant had been engaged and also bearing in mind that he was able to secure another employment after the injuries were suffered, the functional disability being not equivalent to the disability in relation to the specific limb, the future loss

of income has to be computed accordingly. In the assessment of this Court, the case of disability suffered here being essentially on account of restricted movement of the shoulder, the functional disability may be treated to the extent of 25% in relation to the whole body.

7. Since the net loss of income was Rs. 2,000/-, the future loss of earnings would be to the extent of (2,000 x 20 ÷ 100) Rs. 400/- per month. Since the claimant was 50 years at the relevant point of time, the loss of future income may be calculated on the multiplier of 13. Thus, the compensation under the said head is calculated as (400 x 12 x 13) Rs. 62,400/-.

8. Having regard to the nature of injuries suffered, the damages for loss of amenities to the extent of Rs. 2,000/- are added. Thus, the total compensation payable in the case liable to be enhanced by (62,400 + 2,000) Rs. 66,400/- rounded off to ₹67,000/-. Needless to add, the enhanced portion of compensation would also carry interest at the rate levied by the tribunal. The award is modified as above.

9. The insurance company is directed to deposit the enhanced portion of the award with the tribunal within 30 days of today whereupon it shall be released to the appellant/claimant by deposit in his name in a nationalized bank in a fixed deposit receipt for a period of three years with liberty to draw monthly interest.

10. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 07, 2016/nk