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

Date of Decision: 15th March, 2016

+ **MAC.APP. 484/2014**

JAVID @ JABED

..... Appellant

Through: Mr. R N Yadav, Adv.

versus

NITIN MATHUR & ORS

..... Respondent

Through: Mr. Pavan Kumar Vashishth, Adv. for
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 suffered injuries in a motor vehicular accident that occurred at about 10.15 PM on 01.11.2012 involving Honda City car bearing registration No.DL 3CP 7463 (the offending vehicle) admittedly insured against third party risk with the third respondent (insurer). He brought a claim petition under sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) registered on 12.04.2013 as petition No.271/2012, before the Motor Accident Claims Tribunal (tribunal), impleading the insurer, driver and owner of the offending vehicle as parties. The tribunal held inquiry and, by judgment dated 07.03.2014, awarded compensation of ₹7,21,000/- with interest at 9% per annum from the date of filing of the petition till realization in his favour, calculating the compensation as under :

<i>“Medical Expenses</i>	<i>: Rs. 13,800/-</i>
<i>Pain and sufferings and enjoyment of life</i>	<i>: Rs. 40,000/-</i>
<i>Special diet, Conveyance & Attendant Charges</i>	<i>: Rs. 18,000/-</i>
<i>Loss of Income</i>	<i>: Rs. 53,000/-</i>
<i>Loss of future income on account of disability</i>	<i>: Rs. 5,71,200/-</i>
<i>Loss of Amenities</i>	<i>: <u>Rs. 25,000/-</u></i>
<i>TOTAL</i>	<i>: <u>Rs. 7,21,000/-</u>”</i>

2. In assessing the loss of income and loss of future income on account of disability, the tribunal assumed the income notionally on the basis of minimum wages (₹8,814/- per month) payable to a skilled worker at the relevant point of time and the functional disability to be to the extent of 30%.

3. The claimant is aggrieved on the ground that he had proved his income to be in the region of ₹15,000/- per month as a workman who was engaged in the job of denting and painting of vehicles in a private garage. It is his submission that the said evidence was wrongly discarded and that the element of future prospect was not considered. He is aggrieved also for the reason that the disability certificate had shown the permanent disability assessed by a medical board to be 44.6% permanent physical impairment in all four limbs. It is his contention that the said assessment should have been adopted as the functional disability.

4. Having heard counsel for the appellant, this Court finds no substance in any of the contentions urged.

5. The claim that the appellant was working at a salary of ₹15,000/- per month is not supported by any documentary proof. Mere production of salary slip (Ex.PW1/9) would not suffice. He examined Sagir Ahmad (PW3) to prove his said employment in the private garage. But then, the

witness did not produce any records whatsoever corroborating the claim that he is the owner of a garage known as Sagir Motors and further that he had engaged the appellant as the employee at the wages claimed by him. In these circumstances, the Tribunal correctly followed the minimum wages payable to a skilled worker to assess the loss of income in the present and in future.

6. In the case reported as *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, Supreme Court, *inter-alia*, ruled that the element of future prospects of increase in income will not be granted in cases where the deceased was “self employed” or was working on a “fixed salary”. Though this view was affirmed by a bench of three Hon’ble Judges in *Reshma Kumari & Ors. Vs. Madan Mohan & Anr.*, (2013) 9 SCC 65, on account of divergence of views, as arising from the ruling in *Rajesh & Ors. vs. Rajbir & Ors.*, (2013) 9 SCC 54, the issue was later referred to a larger bench, *inter-alia*, by order dated 02.07.2014 in *National Insurance Company Ltd. vs. Pushpa & Ors.*, (2015) 9 SCC166.

7. Against the above backdrop, by judgment dated 22.01.2016 passed in MAC Appeal No. 956/2012 (*Sunil Kumar v. Pyar Mohd.*), this Court has found it proper to follow the view taken earlier by a learned single judge in MAC Appeal No. 189/2014 (*HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi & Ors.*) decided on 12.1.2015, presently taking the decision in *Reshma Kumari (Supra)* as the binding precedent, till such time the law on the subject of future prospects for those who are “self-employed” or engaged in gainful employment at a “fixed salary” is clarified by a larger bench of the Supreme Court.

8. There being no evidence led to show any progressive rise in the wages, the element of future prospects was rightly not considered by the tribunal. The disability certificate (Ex.PW4/A) was issued by Gobind Ballabh Pant Hospital by the Government of NCT of Delhi on 13.11.2013. It clearly shows that the appellant had suffered head injury with quadriparesis, his disability being permanent in nature to the extent of 44.6% in relation to his limbs. In these circumstances, the said disability cannot be treated as functional disability or disability in relation to the whole body. In these circumstances, the tribunal has made a fair assessment by treating him as functionally disabled to the extent of 30%, following the guidance in *Mohan Soni v. Ram Avtar Tomar I* (2012) ACC 1 (SC) and *Raj Kumar v. Ajay Kumar* (2011) 1 SCC 343.

9. For the foregoing reasons, there is no case made out for any enhancement.

10. The appeal is dismissed.

R.K. GAUBA
(JUDGE)

MARCH 15, 2016
VLD