

\$~1

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

Date of Decision: 30th March, 2016

+ **MAC.APP.593/2007**

RAVINDER KUMAR

..... Appellant

Through: Mr. Vijay Chaudhary, Adv. with
appellant in person.

versus

SANJAY RAGHAV& ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellant, then aged 43 years, a practicing advocate, suffered injuries in a motor vehicular accident at about 11.45 p.m. on 20.11.2002, when the three wheeler scooter No. DL 1R F 5136 (TSR) in which he was travelling became involved in a collision with Maruti van bearing No. DL 2CV 3605 (the offending vehicle). He preferred an accident claim case under Section 166 of Motor Vehicle Act, 1988 (MV Act) on 16.05.2003 before the motor accident claims tribunal (the tribunal) which registered it as MACT case No. 469/2004. In the said claim case, the driver, owner and insurer of the offending vehicle were impleaded as respondents, they now being first to third respondents in the appeal. It was alleged by the appellant (claimant) before the tribunal that the accident had

occurred due to rash/negligent driving of the offending vehicle and that he had suffered injuries which had rendered him permanently disabled. Noticeably, the insurer (third respondent) admitted that it had issued a third party insurance policy in respect of the offending vehicle for the period in question. The tribunal, by judgment dated 06.01.2007, awarded compensation in the sum of ₹ 5,83,250/- with interest, calculating it thus:-

	₹
1. <i>Pain & suffering</i>	50,000/-
2. <i>Actual medical expenses</i>	1,75,250/-
3. <i>The special diet and conveyance</i>	20,000/-
4. <i>Loss of earning during the period of Treatment</i>	50,000/-
5. <i>Expenses on attendant for the period of six months @ ₹ 3,000/- p.m. /-</i>	18,000/-
6. <i>Loss of earnings due to the disablement (reasonably awarded though not proved)</i>	1,80,000/-
7. <i>Future medical expenses</i>	40,000/-
8. <i>Loss of amenities in life</i>	50,000/-

2. Since the insurance cover was admitted, the third respondent herein (insurer) was directed to satisfy the award.

3. The claimant felt aggrieved with the compensation awarded and has come up by appeal at hand to this Court seeking enhancement.

4. It may be mentioned here that during the inquiry into the claim petition, the appellant had examined besides himself (PW-1), Dr. Attique Vasdev (PW-2), Consultant Orthopaedic Surgeon of Sir Ganga Ram Hospital, New Delhi under whose care and treatment he had remained after the accident. PW-2 during the course of his testimony was called upon by the appellant to give opinion as to the disability suffered by him and the

extent thereof, whereupon the said doctor stated that in his assessment, the appellant had suffered “some disability” which was to the tune of 20%. He explained that the appellant was at that stage suffering from cellulitis because of infection of bone in the right leg. It may further be added that PW-2 also informed the Court that the appellant would need further treatment/surgery for removal of implants and gave an assessment that the expenditure that would be required would be in the region of ₹30,000/- to 40,000/-. After the evidence had been concluded by the claimant, with the opposite parties not adducing any evidence, the claim case had become ripe for final adjudication. It was at that stage that the appellant submitted before the tribunal a disability certificate issued on 07.02.2006 by a board of doctors of Guru Tegh Bahadur Hospital of the Govt. of NCT of Delhi to the effect that the appellant had been rendered a case of locomotor impairment in relation to both lower limbs, left upper limb and spine, being to the tune of 72% which was a condition non-progressive and not likely to improve.

5. The tribunal while passing the impugned judgment, however, was not impressed with the disability certificate dated 07.02.2006. It referred to the opinion given by PW-2 at the instance of the appellant and concluded that the disability for which the loss of future earning capacity was to be compensated had to be treated as 20%.

6. The appellant had stated in the claim petition that he was earning ₹ 40,000/- per month from his avocation as a practicing advocate. He claimed to be paying income tax and having declared an income in the sum of ₹ 3,94,270/- for the assessment year 2002-2003. He filed a document purporting to be the income-tax return (ITR) for the said year, it having been taken on record as document mark ‘A’ which is accompanied by another

showing calculation of the receipts and expenditure on the basis of which net income had been worked out, it being document mark 'B'. On the basis of such evidence, the tribunal concluded that the income of the appellant had to be assessed at ₹ 49,400/- per annum which worked out to ₹ 4,117/- per month rounded off to ₹ 5,000/- per month and on the basis of disability to the tune of 20%, the loss of future income was assessed and sought to be compensated.

7. In appeal, the claimant submits two grievances; one, that his disability as shown by the certificate dated 07.02.2006 to the extent of 72 % should have been accepted and, second, that the tribunal had fallen into error by assuming net income to be the earnings from the profession rather than accepting ₹ 3,94,270/- which are the gross receipts for the period of corresponding year 2002-2003, as shown in mark 'B'.

8. During the pendency of the appeal, the insurer moved an application (CM No. 12630/2009) seeking a direction for referring the appellant to a medical board for getting a clear opinion as to his disability. The said application was considered by this Court on 18.09.2009. It is noted from the order passed on the said date that the appellant was directed to appear before the medical board to be constituted by medical superintendent of Ram Manohar Lal Lohia Hospital, New Delhi for assessment with regard to his disability, taking note of the fact that the appellant had failed to produce any specific evidence in support of the claim with regard to the extent of disability. It may be mentioned here that, by subsequent orders, the appellant was referred to other medical boards for fresh opinion. In the result, opinions of three boards have come on record, they being certificate dated 21.03.2012 issued by medical board of Dr. Ram Manohar Lohia

Hospital of the Govt. of India (page 69 of the paper book), certificate dated 20.03.2014 again by board of doctors of Dr. Ram Manohar Lohia Hospital, New Delhi of the Government of India (page 84 of the paper book) and certificate dated 11.10.2014 issued by medical board of Guru Tegh Bahadur Hospital, Govt. of NCT of Delhi (page 85 of the paper book).

9. The disability certificate relied upon by the claimant before the tribunal, purportedly issued on 07.02.2006, was never strictly proved. Its contents have already been taken note of earlier. In the certificate dated 21.3.2012, the medical board of Dr. Ram Manohar Lohia Hospital stated that it had been found that the appellant suffers stiffness of left elbow, stiffness of left knee and right side foot, drop partially recovered with average muscle power around and his total permanent disability was assessed at that stage to be to the extent of 20% based, this on the revised guidelines of permanent physical impairment issued by Ministry of Social Justice and Empowerment vide notification dated 01.06.2001. The certificate dated 20.03.2014 instead stated that the appellant is a case of operated polytrauma with partial foot drop on right side, stiffness of right shoulder, left elbow and left knee with partially foot drop on right side, the board's opinion being that his disability is 35%, adding that part of this condition is likely to improve with treatment. The disability certificate dated 11.10.2014 of Guru Tegh Bahadur Hospital, Govt. of NCT, in contrast, stated that the appellant is a case of locomotor disabled, the impairment being permanent in nature, 78% in relation to the four limbs, the condition being non-progressive and not likely to improve.

10. The judgment of the Supreme Court in *Raj Kumar vs. Ajay Kumar & Anr.* (2011) 1 SCC 343, is an authoritative pronouncement on the subject of

assessment of functional disability for award of compensation towards loss of earning capacity on account of effect of injuries suffered in a motor vehicular accident. The Supreme Court observed in the said judgment as under:-

“13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood”.

11. The principles laid down in the case of *Raj Kumar* (supra) were summarized in the judgment thus:-

“19. We may now summarise the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).

(iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in

different persons, depending upon the nature of profession, occupation or job, age, education and h other factors.

12. The appellant is an advocate by profession. Undoubtedly, the nature of his calling requires him to be active and mobile, moving from one Court to the other. Undoubtedly, the traumatic stiffness suffered in all the four limbs would restrict his movement. But, this does not mean that his disability is assessed to the extent of 72% by certificate dated 07.02.2006 and 78% as concluded by certificate dated 11.10.2014 is to be treated as the extent of functional disability. Noticeably, in the certificates dated 21.03.2012 and 20.03.2014, the same injuries have been assessed by two other medical boards to be to the tune of 28% and 35% respectively. Crucially, in the latter certificate dated 20.03.2014, the medical board added that the disability was likely to improve with treatment. In these circumstances, the medical opinion given by the board of doctors of Dr. Ram Manohar Lohia Hospital on 21.03.2013 is found to be the most accurate. Thus, the functional disability for assessing the loss of earning capacity is held to be 28%, rather than 20% as concluded by the tribunal on the basis of tentative opinion given by PW-2 during inquiry.

13. Though the appellant had claimed that he had been in receipt of ₹ 3,94,270/- during assessment year 2002-2003, he did not lead any concrete evidence in such regard. Having claimed that he was assessed to income tax, it should not have been difficult for him to come up with cogent, proof as to his earnings. It needs to be noted that document mark 'A', purported to be ITR submitted by the appellant for assessment year 2002-2003, is not even signed by him (the assessee) nor shown to have been received by the income-tax department for whose purpose it is claimed to have been

prepared. Same appears to be the case of document mark 'B' which is described as the document reflecting receipts and expenditure and computation of net income for the financial year ending 31.3.2002. There appear to be documents which were prepared in some hurry. This is noticeable by the very fact that while the income from business was declared as ₹ 49,400/- with no other income shown, the gross total income is reflected as ₹49,000/-. Interestingly they also show that the appellant was not liable to pay any income-tax. So much for the claim that the appellant had earnings to the extent that he was paying income tax. The receipts declared in document mark 'B' are not supported by any further material. There is no authenticity of the said declaration by any supportive documents. Even if it were assumed to be true that they would reflect the turnover, the said amount cannot be treated as income. It is only the net which is reflected at the bottom of the said document which deserves to be noticed as some proof of the income of the appellant.

14. Since the tribunal accepted the said evidence to return a finding that the income was ₹ 49,400/- per annum, this Court is not inclined to interfere in the said findings for the above noted deficiency, particularly, as no appeal was brought to question the conclusion of the tribunal.

15. In above view, the only improvement that needs to be made in the calculation of compensation is by recomputing the loss of future earnings on the basis of functional disability to the extent of 28%.

16. As noted earlier, the tribunal had assessed the income at ₹ 5,000/- per month. This would mean the loss of earning capacity on monthly basis was $(5,000 \times 28 \div 100)$ ₹ 1,400/-. The appellant was 43 years old at the relevant point of time. In these circumstances, the multiplier of 14 had to be adopted

Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121. Therefore, the total loss of future earning capacity may be computed as $(1,400 \times 12 \times 14)$ ₹ 2,35,200/-. Since the tribunal had awarded ₹ 1,80,000/- under this head, the compensation needs to be increased by $(2,35,200 - 1,80,000)$ ₹ 55,200/-. Ordered accordingly. Needless to add, the increased amount of compensation shall also carry interest as levied by the tribunal.

17. The insurer is directed to deposit the enhanced portion of the compensation with the tribunal within 30 days with proportional interest whereupon it shall be released to the appellant (claimant).

18. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 30, 2016/nk