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

Date of Decision: 16th May, 2016

\+ MAC.APP. 622/2007 and CM NO.14117/2007

JIYA LAL ..... Appellant

Through: None

versus

LALIT KUMAR JHA AND ORS. ..... Respondents

Through: Mr. Pradeep Gaur, Adv. for R-3

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

<u>JUDGMENT</u>

<u>R.K.GAUBA, J (ORAL):</u>

1. The appellant, then 18 years old, working as a helper on a motor vehicle bearing registration no.HR-38S-4645 (offending vehicle) suffered injuries on account of negligent driving thereof resulting in an accident on 02.08.2005. He filed an accident claim case (petition no.244/2006) on 24.10.2005 seeking compensation under Sections 166 and 140 of the Motor Vehicles Act, 1988, impleading the driver, owner and insurer of the offending vehicle as parties, they being the first, second and third respondents respectively in the appeal.

2. The Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 28.04.2007, upheld his case about injuries having been suffered due to negligent driving of the offending vehicle. The said finding has attained finality. By the said judgment, the tribunal awarded Rs.1,61,924/- as compensation with interest at the rate of 7.5% p.a. from the date of filing of the petition till realization, the said amount being inclusive of Rs.1,16,924/- towards loss of future income, Rs.30,000/- towards pain and injury and Rs.15,000/- towards special diet & conveyance charges and medicines.

3. It is noted from the tribunal's record that by an unsigned order purportedly recorded on 19.07.2007 (appended at page 41 of the tribunal's record) an award of Rs.48,718/- was further added towards loss of earnings for the period of 16 months.

4. The claimant filed the present appeal seeking enhancement, his main contention being that his disability to the extent of 54% in addition to left lower limb merited enhanced compensation as the same has substantially reduced his life span and income opportunities.

5. The appeal was put in the category of Regulars as per order dated 24.05.2010. Thereafter, whenever it has been taken up, neither the claimant nor his counsel have chosen to appear. The situation has been same over the last several dates of hearing. Given the old pendency, there is no reason why the hearing should be deferred yet again.

6. Having heard the learned counsel for the insurer and having perused the record of the tribunal, it is found that the claimant had proved disability

certificate (Ex. PW1/24) issued by the board of doctors of Babu Jagjeevan Ram Memorial Hospital, Jahangir Puri, on 31.07.2006 affirming that he had been rendered 54% permanent disabled, his physical impairment in relation to "Fuc of RTA with dislocation hip (R) and comp fracture of Lt. Lower limb (BB Talus, medial mallolus, 4th toe with amputation) with skin loss on the heel and stiff ankle (L)."

7. The tribunal, for reasons not explained, took the functional disability to be 20% in relation to the whole body. It is noted that the claimant was working as a helper on a motor vehicle. Given the nature of the injuries and the disability suffered in the collision, his functional disability cannot be so low as assessed by the tribunal. It deserves to be treated as 30% in relation to the earning capacity. Since the claimant was 18 years old on the relevant date, the loss of future income on this account should have been calculated with the multiplier of 18 rather than 16. For such purposes, the tribunal decided to assume the income of the claimant at the rate of minimum wages of unskilled worker and took the same as Rs.3044.90. It appears the tribunal failed to take note of the fact that the minimum wages for unskilled workers had been increased to Rs.3165.90 with effect from 01.08.2005.

8. Thus, the loss of future income is recalculated as (Rs.3166/- x 30/100 x 12 x 18) Rs.2,05,156.80, rounded off to Rs.2,06,000/-. The loss of earnings for 16 months (the period for which the claimant remained under treatment), calculated as (Rs.3166 x 16), Rs.50,656/- rounded off to Rs.51,000/- would need to be further added.

9. Adding the non-pecuniary damages in the total sum of Rs.45,000/-, the compensation in the case comes to (Rs.2,06,000/- + Rs.51,000/- + Rs.45,000/-) Rs.3,02,000/-.

10. Following the consistent view taken by this Court, the rate of interest is increased to 9% per annum from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.]

11. The award is modified accordingly.

12. The insurer is directed to pay the enhanced award suitably adjusting the amount already paid to the claimant by requisite deposit with the tribunal within 30 days of this judgment. The amount so deposited shall be released by the tribunal to the claimant in the form of fixed deposit receipt in nationalized bank of his choice for a period of 7 years with right to draw periodical interest.

13. The appeal and the pending application are disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 16, 2016
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