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

Date of Decision: 13th May, 2016

+ **MAC.APP. 617/2007**

SAURABH MAMGAIN

..... Appellant

Through: Mr.Nitinjya Chaudhary & Mr. Rajiv
Kumar Trivedi, Advs.

versus

THE NEW INDIA ASSURANCE CO. LTD. AND ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellant while travelling in a car bearing registration no.DDC-8591 (car), driven by third respondent, on 11.02.2001 suffered injuries in a motor vehicular accident when at about 12:15 AM, it was involved in a collision with another motor vehicle bearing registration no.HR-51D-8900 (the offending vehicle), statedly driven in a negligent manner by the second respondent. He instituted an accident claim case (suit no.374/2007) before the motor accident claims tribunal (the tribunal) seeking compensation for injuries suffered by him under Sections 166 & 140 of the Motor Vehicles Act, 1988 (the MV Act). The tribunal clubbed the said case with another similarly placed accident claim case, also arising out of the same accident, and held inquiry, on conclusion of which, by judgment dated 04.07.2007,

the case of the appellant (claimant) about injuries having been suffered by him due to negligent driving of the aforementioned offending vehicle was upheld. The said finding has since attained finality as there was no challenge brought thereto.

2. By the abovesaid judgment, the tribunal found that due to injuries suffered by him in the accident, the appellant had suffered permanent disability affecting his earning capacity to the extent of 65%. The appellant was born on 07.11.1972 and, thus, on the date of accident, his age was a few months above 28 years. To calculate the loss of future income on account of disability, the tribunal applied the multiplier of 17. It found, on analysis of evidence adduced that the income of the claimant was to be taken as ₹10,538.45 on which the future income loss was to be worked out and, thus, calculated ₹13,97,471.40 as the loss of future income. It calculated medical expenditure incurred to be in the sum of ₹6,97,263/- and allowed the same to be compensated, also adding ₹1,00,000/- as damages towards pain and suffering, ₹25,000/- towards special diet and conveyance, ₹35,000/- towards attendant charges, ₹50,000/- towards permanent disability and ₹1,00,000/- towards loss of enjoyment and amenities of life. In the result, total compensation of ₹24,04,734/- was awarded with interest at the rate of 7% per annum. Since the offending vehicle was admitted to be insured against third party risk with New India Assurance Co. Ltd. (first respondent), it was called upon to satisfy the award under the indemnity clause.

3. By appeal at hand, the claimant has submitted grievances that his income was not properly assessed. He refers to document Ex.PW2/164 (page 717 of the tribunal's record) to claim that he had been given a

contractual job with Addison Wesley (Singapore) PTE. Ltd. as Production Manager at retainer fee of ₹21,500/- per month. His contention is that the loss of future income should have been calculated accordingly. He also submits that the tribunal in (internal page 60 of) the impugned judgment discussed the evidence placed on record, *inter-alia*, including that a document dated 12.03.2003 of the Department of Physical Medicine and Rehabilitation of All India Institute of Medical Sciences (AIIMS), New Delhi, indicating that he is unable to perform, of his own, a number of day-to-day functions including shaving, cutting of nails, putting lower garments, filling utensils, to squat or use Indian toilet etc. It is his submission that in this view of the matter his permanent disability should have been assessed, in the minimum, to the extent of 80% functional disability and loss of future income should have been calculated accordingly. It is also his grievance that the awards under non-pecuniary heads of damages are inadequate as he had also suffered on account of loss of matrimonial prospects and further the rate of interest levied is on the lower side.

4. Having heard the learned counsel for appellant at length and having gone through the tribunal's record, this court finds that the tribunal has taken an appropriate view both on the issue of income and also the functional disability. The document Ex.PW2/164 was submitted by the claimant in his own testimony. This indeed was not a proper mode to prove the said offer of appointment. The plea that efforts were made to call the person concerned from the company from where this appointment letter was issued but without success (since there was a change of address), cannot carry the case of the claimant on this score any further. The fact remains that the

document has remained unproved. There being no clear evidence of any income more than what has been found by the tribunal on the basis of evidence respecting previous engagement of the claimant with Living Media India Ltd., there is no scope for any higher income being taken into consideration.

5. But it cannot be ignored that the claimant was in regular employment with Living Media, India Ltd.. It is inherent in the terms of the engagement with the said company that there would have been progressive rise in income. The claimant being a well qualified person, during his long career he would have undoubtedly earned incremental increase in the salary and allowances. Therefore, the element of future prospects should have been factored in. In this view, the income of the deceased for calculating loss of future income is computed as $(10538 \times 150 / 100)$ ₹15,807/-.

6. The disability certificate (Ex.PW1/A) indicates that the claimant is a case of post traumatic brain injury sequelae with left hemiparesis declared by the board of doctors of AIIMS to be to the extent of 65% in relation to left half of the body. Incapacity to carry on day-to-day activities of the nature mentioned earlier undoubtedly affect the quality of his life but the same are not such as would result in aggravated disability or functional disability of a higher extent. In these circumstances, this court is not inclined to interfere with the finding as recorded by the tribunal about extent of disability to be 65%.

7. In the result, the loss of future income is re-computed as $(15807 \times 12 \times 65 / 100 \times 17)$ ₹20,96,008/-.

8. The claimant was a bachelor on the date of accident and, therefore, the award on account of loss of marriage prospects should have been granted. It is now added in the sum of ₹50,000/-. It is found that the awards under other pecuniary and non-pecuniary heads of damages as granted by the tribunal are adequate. Putting all these heads of compensation together, the total compensation in the case is computed as (1,00,000+6,97,263+25,000+35,000+20,96,008+50,000+1,00,000+50,000) ₹31,53,271/-, rounded off to ₹31,54,000/-.

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

10. The award is modified as above.

11. The counsel for the claimant fairly concedes that the amount awarded by the tribunal has already been received. The amount thus earlier paid shall be suitably adjusted. The insurer is directed to pay the balance award by requisite deposit with the tribunal within 30 days of this judgment. The amount to be now deposited by the insurer shall be released to the claimant/appellant in the form of fixed deposit in a nationalized bank of his choice for a period of 10 years with right to draw periodical interest.

12. The appeal is disposed of in above terms.

**R.K. GAUBA
(JUDGE)**

MAY 13, 2016/ssc