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

% **Date of Decision: 19th September, 2016**

+ MAC. APP.595/2016

ASHOK KUMAR Appellant

Through: Mr. Anshuman Bal, Adv.

versus

UNITED INDIA INS CO LTD & ORS Respondents

Through: Mr. Priyadarsi Acharya, Adv for
respondent no.1.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the award dated 5th March, 2016 whereby compensation of Rs. 6,30,226.24 has been awarded. The appellant is seeking enhancement of the award amount.

2. On 10th September, 2011 at about 3.00 PM, the appellant was going in a Wagon-R from Delhi to Ram Nagar. The appellant's vehicle was hit by a Safari bearing No.UP 32 DP 5480 in front of Hotel Holiday, Pakwada, Muradabad, U.P. which resulted in grievous injuries to the appellant. The appellant suffered fracture of right femur bone and left humerus bone. The appellant was shifted to AIIMS Trauma Centre where he remained admitted from 11th September, 2011 to 29th September, 2011, 2nd March, 2012 to 3rd March, 2012 and 10th August, 2012 to 11th August, 2012. The appellant underwent four surgeries in his leg and one surgery in his arm in which steel rods were inserted in the appellant's right leg as well as left arm. The appellant suffered 46% permanent disability.

3. The appellant was aged 32 years at the time of the accident and was

self-employed earning Rs.10,000/- per month. However, the Claims Tribunal took minimum wages of Rs.6,422/- and computed the loss of earning capacity as Rs.2,83,595.52 by taking the functional disability as 23%. The Claims Tribunal awarded Rs.77,064/- towards loss of income during the period of treatment, Rs.80,000/- towards loss of amenities and loss of expectation of life, Rs.80,000/- towards pain and suffering, Rs.39,566.72 towards medical treatment, Rs.20,000/- towards conveyance charges, Rs.20,000/- towards special diet and Rs.30,000/- towards attendant charges. Total compensation awarded is Rs. 6,30,226.24.

4. Learned counsel for the appellant urged at the time of the hearing of the appeal that the functional disability be taken as 46%. It is further submitted that the future prospects be taken into consideration to compute the loss of earning capacity. It is further submitted that the compensation be awarded for disfiguration. It is further submitted that the compensation for pain and suffering, loss of amenities and loss of expectation of life be enhanced.

5. The appellant is present in Court along with his counsel and his present condition has been seen. The appellant is unable to walk without the support of a stick due to the insertion of a steel rod in his right leg. The appellant is also unable to drive due to the injuries suffered.

6. On careful consideration of the injuries suffered by the appellant and the permanent disability suffered by him, the compensation of Rs.1,00,000/- is awarded to the appellant for disfiguration, loss of earning, inconvenience, hardships, disappointments, frustration, mental stress, dejection and happiness in future life. The Claims Tribunal has awarded Rs.80,000/- towards pain and suffering and Rs.80,000/- towards loss of amenities which is on a lower side. Considering that the appellant underwent four surgeries in his leg and one surgery in his arm and steel rod has been implanted in his

right leg as well as left arm, the compensation for pain and suffering is enhanced from Rs.80,000/- to Rs.1 lakh and the compensation for loss of amenities of life is enhanced from Rs.80,000/- to Rs.1 lakh. The Claims Tribunal has taken the loss of functional disability at 23%. Considering the present condition of the appellant, the functional disability is enhanced to 41.6%. Taking the functional disability of the appellant as 41.6%, the loss of earning capacity is enhanced from Rs.2,83,595.52 to Rs.5,12,937.984. The total compensation is enhanced by Rs.3,69,342.464.

7. The appeal is allowed and the award amount is enhanced from Rs.6,30,226.24 to Rs.9,99,568.704 i.e. Rs.10,00,000/- (rounded off) along with interest @ 9% per annum from the date of filing the claim petition i.e. 2nd December, 2011 till realization.

8. The enhanced award amount be deposited by respondent no.1 with UCO Bank, Delhi High Court Branch within a period of four weeks from today.

9. Upon the aforesaid deposit being made, the UCO Bank, Delhi High Court shall release 10% of the amount to the appellant by transferring the said amount to his savings bank A/c No.20057387107 with State Bank of India, Nangloi Branch, Delhi. The balance amount be kept in 10 FDRs of 10% each for the periods 6 months, 1 year, 1½ years, 2 years, 2½ years, 3 years, 3½ years, 4 years, 4½ years and 5 years.

10. The monthly interest on the FDRs shall be paid to appellant by transferring the same to his individual savings bank account.

11. At the time of maturity, the fixed deposit amount shall be automatically credited in the individual savings bank account of the beneficiary/appellant.

12. All the original FDRs shall be retained by UCO Bank, Delhi High Court Branch. However, the photocopies of the same shall be provided to

the claimant/appellant.

13. No cheque book or debit card be issued to the claimant/appellant without permission of this Court.

14. No loan or advance or pre-mature discharge shall be permitted without the permission of this Court.

15. UCO Bank, Delhi High Court Branch shall ensure that the savings bank account of appellant is individual account and not joint account.

16. Copy of this judgment be given *dasti* to counsel for the parties under the signature of the Court Master.

J.R. MIDHA, J.

SEPTEMBER 19, 2016

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