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

Date of Decision: 2nd February, 2016

+ **MAC.APP. 498/2011**

VIJAY BAHADUR

..... Appellant

Through: Mr. Santosh Chauriha, Adv.

versus

NARESH & ORS

.....Respondents

Through: Mr. Pankaj Seth, Adv. for R-
3/Insurance company.

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 on 5.4.2009 involving a collision against a vehicle described as Tata Tempo 407 bearing registration No. DL 1LG 2527. He filed a claim case before the Motor Accident Claims Tribunal (the tribunal) which registered it as Suit No. 191/2009 and by judgment dated 17.7.2010 granted compensation in the total sum of ₹ 5,21,102/- with interest @ 7.5 % per annum from the date of filing of the petition till realization. In the claim petition, besides the driver and owner (the first and second respondent), the insurance company (the third respondent) was also impleaded. Since the insurance was admitted, while holding the driver and owner jointly and severally liable to pay the

compensation, the insurance company was burdened with the liability to indemnify.

2. The appellant preferred this appeal in 2011 seeking enhancement of compensation. It is noticed that on some dates of hearing, request was made on his behalf for opportunity for an application to be moved to adduce additional evidence. It was not explained at any stage as what would be the purpose or import of the additional evidence which the appellant sought to bring on record. Be that as it may, inspite of opportunity, no such application was filed and no further material was submitted.

3. The tribunal considered the disability certificate (Ex.PA) issued on 15.3.2010 by a medical board of Hindu Rao Hospital affirming that the appellant has suffered disability to the extent of 23% of the right lower limb on account of injuries which are described as fracture in the right lower limb, particularly, fracture in shaft of femur with fracture of the right foot. The medical board found the said disability to be permanent. Since the medical opinion relates to the disability vis-à-vis the right lower limb, in the opinion of the tribunal, the disability to the extent of 15% in relation to the whole body required to be factored in.

4. During the course of submissions, the learned counsel for the appellant argued that the future loss of income should have been calculated taking into account the 23% disability factor. The submission is apparently not correct as disability in relation to particular limb cannot be treated as the extent of functional disability in relation to the whole body. The view taken by the tribunal in the impugned judgment is, thus, found to be correct and appropriate.

5. The appellant had claimed to be earning ₹ 10,000/- per annum from business. His word to this effect has been accepted without further inquiry. Since the said finding was not challenged by the parties held liable, this Court would not go into the correctness or otherwise of the said conclusion. In this view, the calculation of ₹ 2,88,000/- on account of loss of future income cannot be faulted.

6. The tribunal awarded ₹ 13,102/- on account of medical expenses. The learned counsel for the appellant fairly conceded that he has no further documents to show any medical expenditure over and above what has been granted.

7. The tribunal awarded ₹ 1,00,000/-, ₹ 20,000/-, ₹ 60,000/- and ₹ 40,000/- on account of further treatment, conveyance and diet charges, pain and suffering and loss of enjoyment of life. Having regard to the facts and circumstances of the case, the said awards are just and proper. It may be added here that though an amount of ₹ 1,00,000/- was granted towards future treatment on the basis of medical opinion shown to the tribunal recommending through surgery, as has been conceded at bar during the hearing that in the last seven years, the appellant has not undergone any such surgical procedure.

8. The appeal is devoid of substance and is dismissed.

9. Lower court record be returned.

R.K. GAUBA
(JUDGE)

FEBRUARY 02, 2016/nk