

\$~3

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

Date of Decision: 09.05.2016

+ **MAC.APP. 64/2013**

GYANESHWAR SHINDE

..... Appellant

Through: Mr. Nitin Yadav, Advocate

versus

NATIONAL INSURANCE COMPANY LIMITED

& ORS

..... Respondents

Through: Mr. Shoumik Mazumdar, Adv. for R-1

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellant, then employed as a Constable in Delhi Police, aged 35 years, suffered injuries in a motor vehicular accident that occurred on 11.07.2003 when the scooter bearing registration no.HR-26G-2673 on which he was riding was hit by a Tata Truck bearing registration no.AP-16U-7538 (offending vehicle), concededly insured against third party risk for the period in question with the first respondent. He filed an accident claim case (suit no.740/2010/2004) on 19.01.2004 under Sections 166 and 140 of the

Motor Vehicles Act, 1988 (M.V. Act) impleading the said insurer, driver and owner of the offending vehicle as parties.

2. At the inquiry, it was proved that the accident had occurred due to negligent driving of the offending vehicle and that the claimant had suffered fracture in his spinal cord (L-5 /S1 dislocation with fracture of L-5) besides fracture of right leg femur, fracture of right shoulder, another injury in left leg, apart from injuries of neurogenic bladder and other injuries all over the body.

3. It was further proved through the testimony of Dr. Tarun Goyal (PW-4) on the basis of disability certificate (Ex. PW1/29) that the Medical Board had assessed the status of the claimant and had found him permanently disabled to the extent of 77% in relation to the whole body.

4. The tribunal, by judgment dated 08.12.2011, awarded compensation in the sum of ₹5,29,569/- with interest at the rate of 7.5% p.a. from the date of filing of the petition till realization, calculating it thus :-

Treatment expenses	₹78,061/-
Pain & Sufferings	₹75,000/-
Special Diet	₹15,000/-
Conveyance	₹25,000/-
Attendant's charges	₹72,000/-
Loss of Income:	₹1,89,508/-
Disability/Loss of Ability/Quality of	₹75,000/-

life / Appearance	
Total	₹5,29,569/-

5. The claimant had also prayed before the tribunal that he be awarded compensation on account of loss of future income due to disability. This request was, however, declined and no award was made in such regard on the ground that he had been accommodated by Delhi Police in alternative jobs and thus he had not suffered any actual loss of income.

6. The claimant presses the appeal at hand submitting that though there had been no actual loss of income immediately suffered due to the disability, since the disability is permanent, the loss of earning capacity beyond the age of superannuation (60 years) from Delhi Police required to be compensated.

7. In the given facts and circumstances, this court finds substance in the appeal. Since the evidence on record clearly shows that the effect of permanent disability to the extent of 77% would be life long, there is no reason why the loss of future income post retirement should not be included in the award.

8. It was proved at the inquiry that the claimant was in receipt of ₹8,755/- as monthly income when the accident occurred. Given the fact that he was 35 years old and in permanent service, his income would increase progressively. In these circumstances in order to calculate the future loss of income, the element of future prospects to the extent of 50% requires to be factored in. Thus the loss of future income for the permanent disability to the extent of 77% is calculated, on the multiplier of 9 (as would apply at the

age of superannuation) is computed as (₹8,755/- x 150/100 x 77/100 x 12 x 9) ₹10,92,099/- rounded off to ₹10,93,000/-. The award is modified and enhanced by ₹10,93,000/-. Needless to add, it shall carry interest as levied by the impugned judgment.

9. The insurer is directed to satisfy the enhanced award by requisite deposit with the tribunal within thirty days whereupon it shall be released to the claimant by being put in fixed deposit receipt in a nationalized bank of his choice for a period of 10 years with liberty to draw periodic interest.

10. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 09, 2016
yg

