$~37

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

Date of Decision: 15th February, 2016

\+ **MAC.APP. 28/2009**

BALBIR SINGH PUNIA ..... Appellant

Through: Mr. S. N. Parashar, Adv.

versus

MANOJ KUMAR & ORS ..... Respondents

Through: Mr. Rahul Kumar, Adv. for R-3.

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 at about 11:45 PM on 31.12.2004 involving bus bearing registration no.DL-1PB-3563 which was concededly insured against the third party risk with the third respondent herein (insurer). The appellant brought claim petition under Sections 166 and 140 of the Motor Vehicles Act, 1988 (the MV Act) before the motor accident claims tribunal (the tribunal) which was registered as suit no.95/2008. The owner and the driver of the offending vehicle were also impleaded in addition to insurer as party respondent. The tribunal held an inquiry and by judgment dated 28.07.2008 awarded compensation in the sum of ₹3,41,500/- with interest, directing the insurer to pay.

2. Though the appeal was filed on several grounds, it is pressed mainly on the ground that the loss of future earning capacity was not adjudicated properly by the tribunal. In addition, he also claims that he deserves to be compensated for the artificial limb for which he would require to undergo certain further procedures and limb's procurement through agency engaged in the business of providing clinical rehabilitation services. On liberty being granted for such purpose, on application under Order 41 Rule 27 of Code of Civil Procedure, 1908 (CPC), he examined Susambit Sarangi, Certified Prosthesis Officer (CPO) of Clinical Rehabilitation Services in the company described as Otto Bock Healthcare India in this regard on 11.01.2013.

3. Arguments have been heard. The tribunal's record and the additional evidence adduced during the pendency of the appellant have been perused.

4. The appellant had proved, *inter-alia*, through disability certificate (Ex.PW2/25) before the tribunal that on account of injuries suffered in the accident, he has been rendered permanently disabled on account of post-traumatic above knee amputation in the left lower limb, the disability having been assessed to the extent of eighty percent (80%) in relation to the said part of the body. Having regard to (the item at serial no.21 part II of the first schedule appended to) the Employees' Compensation Act, 1923, amputation below results in loss of earning capacity to the extent of fifty percent (50%).

5. The tribunal awarded lump sum of ₹1,00,000/- on account of such earning capacity observing that the appellant had not suffered any actual loss of earning. It is noted that the appellant was working at the relevant

point of time as peon in All India Radio. At the time of accident that occurred on 31.12.2004, the appellant was 35 years old. Concededly, he did not suffer loss of job on account of injuries or permanent disability. Superannuation would occur in due course, at the age of 60 years. Undoubtedly, retirement from the government service does not mean the possibility of the appellant working for gain would no longer subsist. Thus, loss of earning capacity post-retirement from the government job deserves to be compensated.

6. On the date of accident, the appellant was in receipt of ₹7,640/- as salary from the government job (Ex.PW1/4). Having regard to the said fact, compensation or loss of future earning capacity to the extent of fifty percent (50%) of the said amount needs to be taken care of. Since he would continue in job till the age of 60 years, future earning capacity may be worked out on the multiplier of 9. In this view, future loss of earning is calculated at (3820x12x9) ₹4,12,560/-.

7. The evidence of witness examined under Order 41 Rule 27 CPC shows that the appellant would be in a position to acquire artificial limb at cost of ₹3,40,000/-. This estimate was not challenged by the insurance company in spite of opportunity given for the purpose. Thus, cost of artificial limb in the sum of ₹3,40,000/- also deserves to be granted.

8. In above view, compensation needs to be enhanced by the sums of (4,12,560-1,00,000 = ₹3,12,560+3,40,000/-) ₹6,52,560/-, rounded off to ₹6,53,000/-.

9. The compensation is, accordingly, enhanced by ₹6,53,000/-. The said amount shall also carry interest as levied by the tribunal. The entire enhanced portion of the compensation shall be put in two separate fixed deposits, one part whereof shall be in sum of ₹3,40,000/- to be kept in interest bearing account for a period of six months, it to be released to the company from which the appellant arranges the artificial limb, and balance being in separate interest bearing account for a period of 7 years with right to draw monthly interest.

10. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

FEBRUARY 15, 2016/ssc