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

Date of Decision: 17th February, 2016

\+ **MAC.APP. 7/2014**

SH LAL BABU ..... Appellant
Through Mr. N K Jha, Adv.

versus

SHRI RAJBIR & ORS ..... Respondents
Through Mr. Dushyant K Mahant and Mr. Ankur Mittal, Advs. for R-3

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellant had suffered injuries in the motor vehicular accident that occurred at about 7.15 AM on 04.07.2006 involving truck bearing No.HR 63G 2870 (the offending vehicle) which was concededly insured with the third respondent against third party risk. The appellant filed a claim petition under section 166 of Motor Vehicles Act, 1988 (MV Act) before the Motor Accident Claims Tribunal (the Tribunal) which registered it as case No.1709/2008. On the basis of inquiry, compensation in the sum of Rs.83,900/- with interest @ 7.5% per annum (18.09.2006) till realization was granted. The claimant is in appeal questioning the computation of compensation only on the ground that loss of future income has not been properly calculated and lumpsum has been awarded at Rs.50,000/- without any basis. It is noted that the appellant had been certified by a board of

doctors at Deen Dayal Upadhyay Hospital of Government of NCT Delhi on 16.06.2012 to be suffering from permanent disability of 19% in relation to bilateral lower limb due to post traumatic amputation of first and second toe of right and third toe of the left leg. The Tribunal accepted this evidence but in absence of requisite details of the avocation, taking into account the overall circumstances, assessed the functional disability resulting in loss of future income to be around 10% vis-a-vis the whole body. It then proceeded to grant lumpsum amount of Rs.50,000/- towards loss of income during treatment period and also on account of disability.

2. Indeed, the above approach is erroneous. The loss of income during the period of treatment and loss of future income have to be separately computed.

3. The Tribunal did not make any comment as to the income of the claimant at the time of accident. The learned counsel for the appellant fairly concedes that the appellant, aged 24 years at the time of accident did not lead evidence with regard to his income. In these circumstances, the income of the claimant at the time of accident (04.07.2006) is notionally assessed at Rs.3,271/- per month on the benchmark of minimum wages for unskilled workers prevailing at that point of time. The material on record of the Tribunal indicates that after suffering the injuries the appellant had remained under treatment till 10.12.2007. This would mean that he would have been rendered incapable of working for gain for a period of approximately 17 months. Thus, loss of income is calculated at (3271 x 17) Rs.55,607/-.

4. Since there is a disability of permanent nature to the extent of 10%, rightly so assessed by the Tribunal, the loss of future income has to be

calculated @ Rs.327 per month on the multiplier of 18. The loss of future income, thus, is computed at (327 x 12 x 18) Rs.70,632/-.

5. In above view, instead of Rs.50,000/-, loss of income during the treatment and in future has to be awarded in the sum of Rs.(70,632 + 55,607) Rs.1,26,239/-.

6. In view of the above conclusions, the compensation needs to be enhanced by (1,26,239 – 5,000) Rs.76,239/-. The compensation awarded by the Tribunal is, thus, increased to (83900 + 76239) Rs.1,60,139/-, rounded off to Rs.1,60,200/- (Rupees One Lakh Sixty Thousand and Two Hundred only). It shall carry interest at the rate levied by the Tribunal.

7. The counsel on both sides concede that the amount of compensation awarded by the Tribunal with interest has already been paid. The insurance company is directed to pay the enhanced portion with proportionate interest within 30 days of this order by depositing the same in the form of appropriate instrument with the Tribunal which shall release it by getting it deposited in a nationalized bank in the name of the claimant in an interest bearing fixed deposit for a period of 10 years, with right to draw monthly interest.

8. The appeal is disposed of in above terms.

9. Tribunal's record be returned.

R.K. GAUBA
(JUDGE)

FEBRUARY 17, 2016/VLD