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

Date of Decision: 10th May, 2016

+ **MAC.APP. 73/2013**

SATYAWATI WADHWA

..... Appellant

Through Mr. Dwapayan Gupta, Adv.

versus

JITENDER SINGH & ORS.

..... Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellant was travelling in a bus bearing registration No.DL 1PB 4116 (the bus) on 14.01.2009 for going to her office in Udyog Bhawan, New Delhi and as she had alighted at the point of destination at about 11.40 AM and started crossing road, the driver of the bus put it in sudden motion making her fall resulting in she suffering injuries. An accident claim case (suit No.138/10) was instituted by her on 26.07.2012 impleading the driver, owner and insurer of the bus (first to third respondents herein) as the party respondents. The tribunal held inquiry and, by judgment dated 14.08.2012, upheld the case of injuries having been sustained due to negligence on the

part of bus driver. The compensation in the sum of ₹5,97,681/- was awarded with interest at 9% per annum calculated thus :

<i>Medicines and Medical treatment</i>	:	<i>Rs. 2,30,660/-</i>
<i>Pain and suffering loss of</i>	:	
<i>Amenities of life</i>	:	<i>Rs. 1,50,000/-</i>
<i>Conveyance and Special Diet</i>	:	<i>Rs. 30,000/-</i>
<i>Loss of Income</i>	:	<i>Rs. 1,50,231/-</i>
<i>Attendant Charges</i>	:	<i>Rs. 36,790/-</i>
 <i>TOTAL</i>	:	 <i>Rs. 5,97,681/-</i>

2. The loss of income was subjected to compensation on the basis of finding that the claimant working as a stenographer with Ministry of Commerce in the Government of India, was in receipt of salary of ₹33,582/- per month and that on account of injuries she was constrained to be absent from duty, having availed earned leave to the extent of 169 days and commuted leave to the extent of 85 days. The tribunal awarded compensation by allowing the cash equivalent of 169 days of earned leave on the basic pay and dearness allowance to the tune of ₹26,668/-per month for the period of five months and nineteen days observing that nothing had been shown in support of the claim for encashment of the medical leave.

3. The claimant, by the appeal at hand, seeks compensation for the entire period of leave taken against the total emoluments of ₹33,582/-. It is also the contention of the claimant that the amount of ₹1,50,000/- granted towards pain & suffering and loss of amenities of life were deficient in view of disability suffered.

4. Whilst the approach of the tribunal in calculating the emoluments for which the compensation cannot be faulted, the denial of the equivalent value of 85 days of commuted leave cannot be approved. Leave of all kinds is available to a government servant at his convenience. The leave account represents value in terms of money. Since the claimant was constrained to also avail 85 days of commuted leave, she is entitled to damages representing the said period as well. But commuted leave is granted to the government servants with each day representing half pay. Therefore, the total compensation had to be granted for 169 days of full pay and for 85 days of half pay, in other words, for the total period of 212 days which would be seven months and two days. Against the emoluments of ₹26,668/- per month, the total compensation on this count would calculate to $(26,668 \times 7 + 26,668 \div 30 \times 2)$ ₹1,88,454/-. Since the tribunal had awarded ₹1,50,231/- on this count, the compensation needs to be enhanced by ₹38,223/- rounded off to ₹38,300/-.

5. The disability certificate (Ex.PW1/3) issued by the Board of doctors of Deen Dayal Upadhyay Hospital of Government of NCT of Delhi had assessed the case of the claimant to be one of post-traumatic scarring in both lower limbs treated as permanent disability to the extent of 10% in relation to both lower limbs. Admittedly, the injuries or the disability suffered did not result in loss of employment or earnings except to the extent of leave of absence to be taken. A disability of this nature cannot be treated as functional disability to affect the loss of future earning capacity. In these circumstances, the award under the pecuniary heads of pain &

suffering and loss of amenities of life do not call for any further enhancement.

6. Thus, the award is modified by being enhanced by ₹38,300/-. The enhanced portion of the award shall carry interest as levied by the tribunal.

7. The insurance company is directed to deposit the enhanced award by requisite deposit with the tribunal within 30 days whereupon it shall be released to the claimant.

8. The appeal is disposed of in above terms.

**R.K. GAUBA
(JUDGE)**

**MAY 10, 2016
VLD**

