$~R-289

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

Decided on: 9th October, 2017

\+ MAC APPEAL No. 62/2011

ANAND MISHRA ..... Appellant
Through: None.

versus

PREM KUMAR & ORS. ..... Respondents
Through: Mr. Arun Yadav, Adv. for R-3.

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

JUDGMENT (ORAL)

1. The appellant, then aged 26 years, while moving on his bicycle to distribute newspapers to earn his livelihood, suffered injuries in a motor vehicular accident that occurred on 24.04.2009 involving negligent driving of truck bearing registration no. MP 17C 5736. On his claim petition (MACT No. 34/2009), the motor accident claims tribunal, by judgment dated 21.10.2010, found a case made out for compensation to be awarded holding the truck driver responsible. Compensation in the total sum of Rs. 2,82,960/- was awarded, the liability to pay having been fastened on the third respondent (insurer) of the truck, the amount having been calculated thus:-

S.No.	Heads	Compensation
1.	Cost of medicine bills	Rs. 5,524/-
2.	Conveyance and special diet	Rs. 15,000/-
3.	Loss of income	Rs. 11,802/-
4.	Loss of earning capacity	Rs. 2,00,634/-
5.	Pain and suffering	Rs. 30,000/-
6.	Loss of amenity	Rs. 20,000/-
	Total	Rs. 2,82,960/-

2. It is noted that the tribunal found that the claimant had suffered permanent functional disability evaluated to the extent of 25% and calculated the loss of future earning capacity accordingly. The present appeal was filed seeking enhancement of the compensation primarily on the grounds that the functional disability should have been treated as 100% as the claimant has not been able to move around without assistance. It is also the grievance expressed by the claimant that future prospects of increase was not considered and no compensation was awarded for future medical expenditure as would be necessary for removal of rod that has been implanted in the foot during the treatment.

3. The appeal was put in the category of 'regulars' as per order dated 21.04.2011. When it is taken up for hearing, there is no

appearance for the appellant. The matter has been considered with the assistance of the counsel appearing for the third respondent (insurer) and after perusal of the tribunal's record.

4. It is noted that the evidence led before the tribunal would show that the claimant had suffered injuries including grievous hurt in the right foot. The treatment that had to be undergone included implant of steel rod. The injury, however, has left the claimant permanently disabled on account of locomotor impairment, the condition having been assessed to be permanent as per disability certificate (Ex.PW-3/4), it being to be to the extent of 47% in relation to the right lower limb.

5. It has been the submission of the claimant that he was earning his livelihood as an electrician and a hawker. But then, he did not lead any formal evidence to prove his engagement for gain as an electrician. In absence of such formal proof, the tribunal was constrained to go by the minimum wages. In these circumstances, the non-inclusion of the element of future prospects cannot be questioned.

6. In the opinion of this Court, the evaluation by the tribunal of the permanent functional disability to the extent of 25% is appropriate. The evidence led does not bring out anything from which the plea of the claimant being totally disabled to be to the extent of 100% or he being immobile without assistance could be accepted.

7. Having regard to the fact, however, that a steel rod had to be implanted, the contention that it would require another surgical

procedure for its removal should have been considered and appropriate award towards future medical expenses should have been made. Since the tribunal has failed to undertake the said exercise the needful must be done by this Court.

8. In the above facts and circumstances, and having regard to the expenses incurred earlier, an amount of Rs. 10,000/- is added towards future medical expenses and the award under the head of pain & suffering is increased to Rs. 50,000/-. Thus, there shall be net increase in the award by Rs. 30,000/- (Rupees Thirty Thousand Only). The increased award shall also carry interest as levied by the tribunal.

9. The third respondent is directed to satisfy the enhanced award by requisite deposit with the tribunal within thirty days making it available to be released.

10. The appeal is disposed of in above terms.

R.K.GAUBA, J.

OCTOBER 09, 2017
nk