

\$~R-163

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

Decided on: 6th September, 2017

+ MAC.APP. 64/2010

GANESH

.....Appellant

Through: Mr. S.N. Parashar, Advocate

versus

FARJANDA

..... Respondent

Through: Mr. D.K. Sharma, Advocate for
R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant, then stated to be aged about 35 years old, serving as Head Constable with Delhi Police, while on duty of checking vehicles near R.R. Hospital, close to Dhaula Kuan, suffered injuries in a motor vehicular accident that occurred on 13.06.2008 at about 9:45 p.m., statedly due to negligent driving of truck bearing registration No.HR-55H-2066, which was admittedly insured against third party risk with the third respondent (insurer). He suffered amputation of both lower limbs and, as per the disability certificate (Ex.PW-1/2), the board of doctors of Hindu Rao Hospital certified him to be permanently disabled, the disability being one hundred per cent (100%). He instituted accident claim case (MACT Claim Petition No.558/2006) on 26.09.2006 impleading the driver, owner and insurer

of the offending vehicle as party respondents, they being first, second and third respondents respectively, alleging that the accident had occurred due to negligent driving of the truck. After inquiry, the tribunal, by judgment dated 05.10.2009, accepted the claim for compensation on the principle of fault liability. The said finding has attained finality.

2. The tribunal awarded compensation in the total sum of Rs.3,38,000/-, calculating it thus:-

Sl.No.	Head	Amount in (Rs.)
1.	Medicines & Treatment	12,000/-
2.	Loss of Income	51,800/-
3.	Loss of Earning Power	1,00,000/-
4.	Loss of Amenities	75,000/-
5.	Pain and suffering	75,000/-
6.	Conveyance & Special Diet	25,000/-
	Total	3,38,000/-

3. The liability to pay the afore mentioned amount was fastened on the insurer. The appellant filed the present appeal with the grievances that the compensation awarded is neither just nor fair.

4. It is pointed out that the tribunal awarded lump sum amount of Rs.1,00,000/- under the head of loss of earning power declining to make any assessment on the basis of functional disability due to amputation of both lower limbs. It is also the grievance of the

appellant that the awards under the non-pecuniary heads of damages are grossly inadequate.

5. It is observed that the tribunal has not even made an attempt to assess the functional disability which has been suffered due to amputation of both lower limbs. The lump sum award of Rs.1,00,000/- is not based on any methodical calculation of loss of future earning capacity. In these circumstances, the proper course would be to remit the matter to the tribunal for further inquiry and fresh adjudication on the restricted question of computation of compensation.

6. As is requested by the appellant, he will be given opportunity to lead further evidence with regard to earnings of which loss in future is to be covered by the determination. Needless to add, the parties which contest will also be granted opportunity to lead evidence in rebuttal, if any. Thus, the impugned judgment in so far as it determined the compensation is set aside. The matter is remitted to the tribunal for further proceedings in accordance with law. The parties shall appear before the tribunal on 16th October, 2017. Needless to add, the amount already received by the appellant under the impugned judgment shall be liable to be adjusted.

7. The appeal stands disposed of in above terms.

8. *Dasti.*

R.K.GAUBA, J.

SEPTEMBER 06, 2017/vk