$~R-184

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

Decided on: 12th September, 2017

\+ MAC APPEAL No. 123/2010

GAURAV SHARMA ..... Appellant
Through: Mr. S.C. Singhal, Adv.

versus

RAM ADHAR PARSHAD YADAV & ORS. ..... Respondent
Through: Mr. D.K. Sharma, Adv. for R-3.

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

<u>JUDGMENT (ORAL)</u>

1. The appellant was riding motorcycle bearing registration no. DL 2SM 0816 on 29.05.2005 and as he was taking a turn towards Samalka Chowk, Near NSG Camp from Delhi-Gurgaon Road, a Canter bearing registration no. DL 1L 2634 came from behind and hit him making him fall which led to his suffering injuries including in the head region. He instituted accident claim case (MAC claim petition no. 251/2008) on 11.08.2005 impleading the driver, owner and insurer of the Canter as party respondents, they now being first, second and third respondents respectively in the appeal. On the basis of inquiry held, the tribunal, by judgment dated 03.12.2009, accepted the claim for compensation holding the Canter driver negligent. It awarded compensation in the total sum of Rs. 10,52,750/- calling upon the

insurer to pay with interest @ nine per cent (9%) per annum calculating it thus:-

S.No.	*Heads*	*Compensation awarded*
1.	*Medicines & Treatment*	*Rs. 6,10,000/-*
2.	*Loss of Income*	*Rs. 50,750/-*
3.	*Loss of Earning Power*	*Rs. 3,12,000/-*
4.	*Loss of Amenities*	*Rs. 30,000/-*
5.	*Pain & Suffering*	*Rs. 35,000/-*
6.	*Conveyance & Special Diet*	*Rs. 15,000/-*
	Total	***Rs. 10,52,750/-*** *(Ten Lacs Fifty Two Thousand Seven Hundred Fifty Only)*

2. In the above calculations, the tribunal included the award on account of loss of earning power due to disability taking the functional disability to be to the extent of 15%. The claimant is aggrieved submitting that the said award on account of loss of future earnings due to disability and the non-pecuniary damages under the heads of loss of amenities of life and pain & suffering were inadequate.

3. It is noted that by the evidence, the claimant had proved that the injuries suffered by him in the accident included the loss of left eye, the disability certificate (Ex.PW-3/A) confirming this fact. Though as per the medical opinion the loss of one eye caused physical visual impairment to the extent of 30%, the tribunal took it to be to the extent of 15% only, referring in this context to the fact that he was working as customer service executive with a private entity.

4. In the opinion of this Court, the assumption by the tribunal is erroneous. Loss of one eye, coupled with disfigurement for the reason that a glass had to be fitted, would fall in the nature of handicap described against entry no. 25 in the second part of the first schedule appended to Employees' Compensation Act, 1923 and therefore, deserving to be treated as loss of earning capacity to the extent of 40%. The compensation due to loss of future earnings on this account will have to be re-worked.

5. Since the claimant was 30 years old at the relevant point of time, the tribunal invoked the multiplier of 17. The claimant had proved his earnings at the relevant point of time at Rs. 10,150/-. Thus, the loss of future earnings due to disability is recalculated as (10150 x 40 ÷ 100 x 12 x 17) Rs. 8,28,240/-.

6. Having regard to the nature of injuries suffered and the prolonged treatment that had to be undergone, awards under the heads of loss of amenities of life and pain & suffering are increased to Rs. 1,00,000/- each.

7. Adding the other components awarded by the tribunal, the total compensation in the case comes to (8,28,240 + 1,00,000 + 1,00,000 + 6,10,000 + 50,750 + 15,000) Rs. 17,03,990/- rounded off to Rs. 17,04,000/- (Rupees seventeen lacs and four thousand only). The award is enhanced accordingly. It shall carry interest as levied by the tribunal.

8. The insurer is directed to satisfy the enhanced portion by requisite deposit with the tribunal, making it available to be released. The release of the enhanced portion of the award with corresponding

interest shall be in the form of interest bearing fixed account taken out in a nationalized bank in the name of the claimant for a period of ten years with right to draw periodic interest.

9. The appeal is disposed of accordingly.

R.K.GAUBA, J.

SEPTEMBER 12, 2017
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