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

+ **MAC.APP. 21/2007**

DAVINDER PAL SINGH Appellant
Through: Mr. S.N. Parashar, Adv.

versus

SATYA PARKASH & ORS. Respondents
Through: Mr. Shoumik Mazumdar, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **24.05.2017**

The appellant has impugned the Award of compensation of Rs. 2.40 lakhs pursuant to injury suffered by him in a motor vehicle accident happened on 31.12.1999; he had claimed a compensation of Rs. 12.95 lakhs; he was working as an engineer in a private company; he suffered a disability upto 40% in his right upper arm, which was considered as 10% disability in relation to the whole body.

The appellant's case is that the Tribunal has concluded that there would be no difficulty in the appellant taking up writing work but he would nevertheless have difficulty in lifting heavy weights. In view of the fact that the appellant was working with the same organization, where he was earlier employed, the Court had awarded an amount of Rs. 1 lakh on account of his disability. The appellant contends that the Tribunal erred in arriving at the computed amount because his employment with a private firm is not guaranteed and the employer would look for optimal performance from any employee. He further contends that award of Rs. 30,000/- towards pain and

suffering is on the lesser side. It is contended that nothing has been awarded towards disfigurement and loss of amenities. The learned counsel for the appellant lastly submits that interest rate has been awarded at the rate of 6% p.a. instead of 9% p.a. as per the usual practice.

The learned counsel for respondent no.3 submits that the compensation was awarded on the basis of the evidence led.

Having heard the counsel for the parties, the Court is of the view that in addition to writing work and preparing drawings, etc. an engineer has to perform many other duties, which include client visits, assessing projects sites, taking measurements etc. and the employer would expect such an employee whose work is critical to the entire enterprise to render services optimally and promptly. The appellant's inability to discharge his duties to the fullest extent would always be a reason for him to be removed from employment. In a private organization, the employer would not necessarily employ a person whose capacity of discharging his optimal duties are in any way compromised.

In the circumstances, since the right upper arm of the appellant has been disabled to the extent of 40%, and looking at the nature of the work expected to be discharged by the appellant, the Court deems it appropriate that the disability in relation the whole body of the appellant to be considered up to 25%. Hence the amount of Rs. 1 lakhs awarded towards disability is enhanced to Rs. 2.50 lakhs. Further, there is no compensation awarded towards disfigurement and loss of amenities. On both grounds the appellant is awarded a compensation of Rs, 75,000/- each. The Court notices that the appellant has visited hospitals a number of times as recorded in para 6 of the impugned judgment. The appellant underwent treatment in

various hospitals from December, 1999 to December, 2003. This is a fairly long time for a person to run between the various hospitals i.e. Ram Manohar Lohia Hospital, LNJP Hospital, AIIMS, Sharma Nursing Home, Kailash Colony and Charak Palika Hospital, Moti Bagh. Having suffered more than three years in this regard and undergoing various therapies and operations is some tribulation to be reckoned with. Accordingly, the compensation towards pain and suffering is increased by another Rs. 25,000/-.

The Court has already awarded interest at the rate of 9% in *Municipal Corporation of Delhi, Delhi vs. Association of Victims of Uphaar Tragedy and Ors. AIR 2012 SC 100*. In many cases this Court has also awarded interest @ 9% p.a. Accordingly, the rate of interest is enhanced from 6% p.a. to 9% p.a. to be paid from the date of filing of the claim i.e. 07.07.2000 till the date of payment. The awarded amount along with the interest at the rate of 9% p.a. shall be paid to the appellant within four weeks from today.

The appeal is allowed in the aforesaid terms.

NAJMI WAZIRI, J

MAY 24, 2017/kk