

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

Date of Decision: February 09, 2017

+ **MAC.APP. 165/2008**

KHEM CHAND RAMOLA Appellant
Through: Mr. Roshan Saini, Advocate
versus

SUNDER LAL & ORS Respondents
Through: Mr. Pankaj Seth, Advocate for
respondent-insurer

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **JUDGMENT**
(ORAL)

Impugned Award of 1st December, 2007 grants compensation of ₹8,21,600/- with interest @ 7% *per annum* to appellant, who was injured in a road accident on 2nd March, 2006, resulting in functional disability, which has been assessed at 60% by Motor Vehicle Claims Tribunal (*hereinafter referred to as Tribunal*). The facts of this case are already noted in impugned Award and so, need no reproduction. Suffice to note that appellant was aged 22 years on the day of this accident and a matriculate and was a commercial driver by profession. Appellant's income has been assessed on minimum wages and period of his hospitalization of more than three months has been taken into consideration by learned Tribunal. The disability has not been taken to be 100% in the absence of any evidence of a medical expert. The breakup of

compensation awarded by learned Tribunal is as under: -

1.	Medical expenses	₹2,00,000/-
2.	Loss of earning	₹26,600/-
3.	Disability	₹4,70,000/-
4.	Special diet, conveyance and attendant charges	₹45,000/-
5.	Pain and sufferings	₹50,000/-
6.	Loss of amenities of life	₹30,000/-
Total		₹8,21,600/-

Apart from the evidence of appellant/injured and other formal witnesses, there is deposition of *Paramjeet Singh (R3W1)*, who was the employer of appellant/injured, regarding payment of appellant's hospital bills to the tune of ₹3,30,000/- to Vinayak Hospital. On the basis of evidence led, impugned Award has been rendered.

This appeal is directed against Insurer-respondent No.3. The precise submission of appellant's counsel is that due to amputation of right leg of appellant, he has lost his job of a commercial driver and is unable to move without support and so, appellant's disability ought to be taken as 100%. Attention of this Court is drawn by appellant's counsel to a Disability Certificate, which is undated and was issued by Vinayak Hospital in Noida. It indicates that appellant had undergone amputation of right leg above knee. It is submitted that in view of this Disability Certificate, the compensation granted ought to be reasonably enhanced. It is next submitted by appellant's counsel that addition of 50% ought to have been made towards '*future prospects*' as drivers nowadays are earning very well. It is further submitted by appellant's counsel that the

medical expenses incurred by appellant were beyond ₹5 lacs and appellant still continues to incur medical expenses and that he is getting financial help from various persons and the loans taken by him from such persons for treatment, need to be repaid and so, medical expenses of at least ₹5 lacs be granted to appellant.

Lastly, it is submitted by appellant's counsel that the compensation granted under the non-pecuniary heads needs to be suitably enhanced. To seek enhancement of compensation, reliance is placed by appellant's counsel upon a decision of a co-ordinate Bench of High Court of Gujarat in *Punambhai Khodabhai Parmar v. G. Kenel Construction and Another*, 1984 A.C.J. 739 and a decision of a co-ordinate Bench of this Court in MAC.APP. 833/2012 titled *Reliance General Insurance Co. Ltd. v. Suman Jee Jha & Ors.*, rendered on 24th October, 2016.

Learned counsel for respondent-insurer supports impugned Award and submits that just and fair compensation has been already granted and the enhancement sought in this appeal is unwarranted for the reason that there are no supporting documents to show the extent of disability suffered and there is no basis to seek enhancement of compensation including medical expenses. It is also submitted by learned counsel for respondent-insurer that the compensation granted under the non-pecuniary heads is reasonable and needs no further enhancement. Nothing else is urged by either side.

Upon hearing and on perusal of impugned Award, evidence on record and the decisions cited, I find that for assessment of 'loss of income' and computation of the medical expenses incurred in an injury

case is granted in each case on its own facts. Merely because ₹9 lacs odd has been granted towards '*loss of future income*' in a case of *Suman Jee Jha (supra)* would not have any precedential value. Likewise, decision in *Punambhai Khodabhai (supra)* is of no avail for the reason that the factual aspects on the basis of which compensation has been assessed are not fully spelt out. Pertinently in *Punambhai Khodabhai (supra)*, the criterion under *the Workmen's Compensation Act* has been applied. Even in impugned Award, learned Tribunal has assessed the functional disability at 60% by applying the parameters spelt out in the Workmen's Compensation Act and rightly so, because the medical evidence in this regard is lacking. The so-called Medical Certificate obtained from Vinayak Hospital is not by competent authority and thus, inadmissible to gauge the extent of disability suffered. In any case, it has to be kept in mind that appellant was a commercial driver and now, due to amputation of his right leg, he is unable to drive and is jobless. However, this by itself does not mean that he is not able to earn his livelihood by doing any other work. So, the functional disability cannot be taken to be 100% for want of evidence on this crucial aspect. Regarding financial help for treatment purportedly obtained by appellant, reliable evidence is not forthcoming.

So far as the incurring of medical expenses are concerned, I find that whatever documentary evidence has been produced on record, it does not provide any basis to enhance the compensation as awarded by learned Tribunal under the head of '*medical expenses*'. Regarding addition towards '*future prospects*' is concerned, it needs to be noted that

appellant was not in any kind of stable employment and so, in view of Supreme Court's decision in *Sarla Verma (Smt.) and Others v. Delhi Transport Corporation and Another*, (2009) 6 SCC 121, no addition towards '*future prospects*' can be made. However, learned Tribunal has taken into consideration the interest component to take care of '*future prospects*'.

Be that as it may. The compensation under the non-pecuniary heads certainly appears to be on lower side. Considering the extent of disability suffered by appellant and while taking into account the job profile of appellant, the compensation granted under the head of '*pain and sufferings*' needs to be enhanced from ₹50,000/- to ₹1 lac. The compensation granted under the head of '*loss of amenities of life*' also needs to be suitably enhanced from ₹30,000/- to ₹1 lac as due to amputation of his right leg, appellant is unable to effectively lead his life. No further enhancement or modification of impugned Award is called for.

In the light of the aforesaid, impugned Award is modified as under:-

1.	Medical expenses	₹2,00,000/-
2.	Loss of earning	₹26,600/-
3.	Disability	₹4,70,000/-
4.	Special diet, conveyance and attendant charges	₹45,000/-
5.	Pain and sufferings	₹1,00,000/-
6.	Loss of amenities of life	₹1,00,000/-
Total		₹9,41,600/-

As regards the rate of interest of 7% *per annum* as awarded by learned Tribunal, I find it to be reasonable in view of Supreme Court's dictum in *Rajesh v. Rajbir Singh* (2013) 9 SCC 54 and the fact that accident in question took place in the year 2006. Accordingly, enhanced compensation shall carry interest @7% p.a. Upon respondent-Insurer depositing the enhanced compensation with learned Tribunal within four weeks, it be released to appellant-claimant forthwith.

With aforesaid modification, the appeal stands disposed of.

(SUNIL GAUR)
JUDGE

FEBRUARY 09, 2017

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