

\$~R-473

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 13th November, 2017

+ MAC.APP. 306/2012

DP PANDEY

..... Appellant

Through: Mr. O.P. Mainee, Adv.

versus

GURMEJ SINGH & ORS

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant was employed as a Constable with Central Reserve Police Force (CRPF) during the relevant period and had gone to Dhaula Kuan Area on official duty on 28.02.1993 where while he was walking on foot, he was hit by a motor vehicle described as Delhi Police van bearing registration No. DBP 8172 from behind due to which he was injured. He instituted accident claim case (MAC 14/93/11) on 07.05.1993, impleading the respondents as parties on the other side, alleging that the accident had occurred due to negligent driving of the said police van. The case was put to inquiry and decided by judgment dated 14.03.2007 by Motor Accident Claims Tribunal holding, *inter alia*, that the claimant had suffered injuries due to negligent driving of the above said vehicle of the respondents.

2. It appears the claimant had pleaded that he had suffered permanent disability. However, no formal proof was brought at that

stage and the tribunal, by its judgment dated 14.03.2007, granted total compensation in the sum of Rs. 31,000/-.

3. The claimant brought a challenge to the said judgment by MAC Appeal no. 586/2007 in the course of which it was pleaded that his right hand was paralysed and he was unable to walk without support, his permanent disability having been certified to be to the extent of 65%. Since the question of formal proof of such disability arose, on his request, for opportunity for leading additional evidence and the inquiry was revived before the tribunal, its earlier judgment dated 14.03.2007 having been set aside and the matter remitted by order dated 13.01.2009 of this Court.

4. During the course of further inquiry before the tribunal, additional evidence was adduced, reliance being placed on disability certificate issued by board of doctors of Dr. Ram Manohar Lohia Hospital, New Delhi. The tribunal, by its fresh judgment dated 19.09.2011, was not satisfied mainly on the ground that no doctor who was a member of the board had been examined. By fresh judgment, however, compensation was enhanced to Rs. 43,500/- with interest @ 7.5% per annum only on the enhanced portion of the award from 03.02.2009 till the date of the judgment, the amount of Rs. 43,500/- awarded as compensation calculated thus:

S.No.	Heads	Compensation
1.	Pain & suffering	Rs. 15,000/-
2.	Loss of Amenities	Rs. 15,000/-

3.	Medicines	Rs. 2,500/-
4.	Special diet & conveyance	Rs. 5,000/-
5.	Loss of income	Rs. 6,000/-
	Total	Rs. 43,500/-

5. Aggrieved with the compensation awarded by the fresh judgment of the tribunal, the present appeal was filed, the prime grievance being that there has been no award made on account of loss of future income due to disability.

6. During the course of proceedings arising out of the appeal, on his request (CM No. 5862/2014), the appellant was allowed opportunity to lead fresh additional evidence. Availing the said opportunity, Dr. Harish Gupta, Consultant Medicine of Dr. Ram Manohar Lohia Hospital, a member of the medical board which had issued the disability certificate (Ex.PW-3/A) dated 01.12.2010 was examined. Noticeably, the evidence of Dr. Harish Gupta, tendered on 26.02.2015, has not been challenged, the opportunity for cross-examination having not been availed by the second respondent, who only is now contesting the appeal.

7. The appeal was put in the list of 'regulars', to come up on its own turn, as per order dated 15.03.2016. Thereafter, it has taken up on some dates, *inter alia*, to explore the possibility of amicable resolution through *Lok Adalat*, but with no fruitful results. When it is taken up for hearing, there is no appearance on behalf of the respondents. The learned counsel for the appellant has been heard and with his assistance, the record perused.

8. The injuries suffered by the appellant described in the disability certificate (Ex.PW-2/A) issued by the Department of Rehabilitation of Safdarjung Hospital, New Delhi on 23.05.1994 to be fracture of subluxation C₅/C₆ with PIVD C₅/C₆ with C₅/C₆ Foraminal stenosis with spastic quadriparesis. The claimant remained hospitalized initially in Dr. Ram Manohar Lohia Hospital and thereafter in CRPF Hospital till 18.04.1994, the treatment continuing even beyond. He had initially relied upon disability certificate (Ex-PW2/B) dated 13.12.1999 issued by a board of doctors of a Hospital at Gorakhpur (Uttar Pradesh). It is the said certificate which was found to be unacceptable by the tribunal in the initial judgment. He deposed before the tribunal that he would retire from CRPF service on medical grounds at the age of 48 years. The learned counsel for the appellant, at the hearing, submits the claimant had taken voluntary retirement as he could not continue with the strict regime required to be followed in the service of CRPF as the personnel are expected to be medically fit at all times.

9. During the course of further inquiry, the claimant was examined by a board of doctors of Dr. Ram Manohar Lohia Hospital which issued disability certificate on 01.12.2010 (vide Ex.PW-3/A) affirming his disability to be 62% permanent in relation to the whole body. This is what has been affirmed by Sh. S.Mehto (PW-3) Medical Record Officer of the said hospital and also affirmed in the course of additional evidence by Dr. Harish Gupta who was examined on 26.02.2015 in the proceedings arising out of the appeal at hand.

10. The learned counsel for the appellant submits that the claimant would be satisfied if the loss of income due to functional disability post form retirement from service at the age of 60 years were to be compensated.

11. Having regard to the nature of injuries suffered and the aftermath sustained, as has been assessed by the board of doctors of Dr. Ram Manohar Lohia Hospital, the claimant deserves compensation for loss of future income due to functional disability which, in the given fact-situation, must be treated as 62%.

12. The tribunal, it is noted, found in the impugned judgment that the claimant was earning Rs. 2200/- per month at the relevant point of time. Following the ruling of the Constitution Bench of the Supreme Court rendered on 31.10.2017 in *SLP (C) 25590/2014, National Insurance Company Ltd. Vs. Pranay Sethi and Ors.*, the accident having occurred when claimant was aged 43 years, the element of future prospects of increase to the extent of 30% would deserve to be added. Since the age of superannuation would ordinarily be 60, the compensation has to be determined with the multiplier of 9.

13. Thus, the loss of future income due to functional disability is computed as $(2200 \times 130 \div 100 \times 62 \div 100 \times 12 \times 9)$ Rs. 1,91,505.60, rounded off to Rs. 1,92,000/-.

14. Having regard to the nature of injuries, and the extent of disability suffered, as also the prolonged treatment undergone, the damages under the heads of pain & suffering and loss of amenities of life are increased to Rs. 50,000/- each.

15. Adding the other components of compensation awarded by the tribunal, the total compensation payable in the case comes to (1,92,000 + 50,000 + 50,000 + 2,500, + 5,000 + 6,000) Rs. 3,05,500/-, rounded off to Rs. 3,06,000/- (Rupees Three Lacs and Six Thousand Only). The award is enhanced accordingly.

16. Following the consistent view taken by this Court, the rate of interest is increased to 9% per annum from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*]

17. The second respondent will be obliged to satisfy the enhanced award by requisite deposit with the tribunal within thirty days. Needless to add, the amount already paid in terms of the judgment of the tribunal shall be liable to be adjusted.

18. The appeal is disposed of in above terms.

NOVEMBER 13, 2017

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R.K.GAUBA, J.