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

Decided on: 15th September, 2017

+ **MAC.APP. 221/2009**

SHARAD SINGH

..... Appellant

Through: Mr. Sagar Saxena, Advocate with
Ms. Himanshi Saini, Adv. &
Mr. Ralu Kumar, Adv.

versus

H.D. NARANG & ANR.

..... Respondents

Through: Ms. Neerja Sachdeva, Advocate
for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant herein was a young person, aged about 20 years, when he suffered injuries in a motor vehicular accident that occurred on 29.08.2001 due to negligent driving of car bearing registration No.HR-26-C-7174 by the first respondent, it admittedly being insured against third party risk with the second respondent. He instituted accident claim case (Petition No.459/2008) on 09.08.2002 seeking compensation under Section 166 of the Motor Vehicles Act, 1988. The tribunal held inquiry and, by judgment dated 29.01.2009, found that the appellant had brought home his case for compensation on fault liability. The Tribunal concluded, on the basis of evidence led, that the claimant had suffered injuries which have rendered him disabled

permanently, his functional disability having been assessed to be 100%. The tribunal determined the compensation in the total sum of Rs.18,03,512/-, it inclusive of Rs.10,22,356/- towards actual medical expenses incurred, Rs.6,81,156/- towards consequent loss of earnings due to disability and Rs.1,00,000/- on account of pain and suffering. The liability to pay was fastened on the insurer with interest @ nine per cent (9%) per annum.

2. Aggrieved with the aforesaid determination of compensation, the present appeal was filed to seek enhancement.

3. At the hearing, it is submitted that the tribunal had not correctly assessed the probable income of the claimant ignoring the fact that he had been enrolled with Institute of Chartered Accountants of India for the course leading to the award of certificate of Chartered Accountancy. It is submitted that given the nature of injuries and the disability suffered in the consequence, the tribunal should have taken care of the future needs of not only treatment but also the regular services of a regular attendant. It is also the submission of the appellant that he was a bachelor and the disability has rendered him with loss of marriage prospect and amenities of life, he also being entitled to suitable compensation not only on such account but also for disfigurement, since he is now bedridden and dependant on assistance. The claimant also seeks enhancement of compensation for pain and suffering which in his case would be lifelong.

4. It is noted that the claimant had proved, *inter alia*, by disability certificate dated 13.12.2005 (Ex.PW-4/9) issued by a board of doctors

of All India Institute of Medical Sciences (AIIMS) that he is a case of fracture of C4-5 with quadriplegia besides fracture of shaft of right femur bone and head injury. The certificate confirms that he is physically handicapped, the physical impairment being permanent and 100% in relation to the whole body.

5. It may be that the appellant had enrolled with Institute of Chartered Accountants of India. But, the fact remains that he was yet to study for the certificate that would lead him to eventually become a Chartered Accountant. Life is full of uncertainties and imponderables. In the given fact-situation, the approach of the tribunal in going by the notional income equivalent to the minimum wages payable to a graduate cannot be faulted. However, it is noted that the tribunal committed two errors; one, it adopted the wages of Rs.3339/- which had been actually revised to Rs.3352/- for the period in question and, the second, that the multiplier of 18 should have been invoked. The loss of earning due to disability is, thus, re-computed as $(3352/- \times 12 \times 18)$ Rs.7,24,032/-.

6. The submission of the appellant that he would need the services of an attendant on account of his medical state, deserves to be accepted. In a similarly placed case, though of spastic quadriparesis in which accident had occurred on 02.05.2004, the Supreme Court in case reported as *Kavita vs. Deepak & Ors.*, (2012) 8 SCC 604, had awarded Rs.6,00,000/- towards attendant charges, this, besides Rs.3,00,000/- each on account of loss of amenities of life and Rs.3,00,000/- towards pain and agony. This case deserves similar

awards. In addition, Rs.1,00,000/- each towards loss of marriage prospects and disfigurement are added.

7. The medical expenditure of Rs.10,22,356/-, as included in the dispensation by the tribunal was of actual expenditure incurred till date of the completion of the inquiry. It is not difficult to imagine that in such like cases the need for medical assistance would continue throughout the remainder of life of the claimant. Though formal proof of the expenditure incurred after the conclusion of the inquiry has not been mustered, lump-sum amount may be added so that a corpus is created to take care of all medical needs post the decision. In this view, Rs.1,00,000/- is added towards future medical bills.

8. Adding Rs.10,22,356/- proved before the tribunal as the medical expenditure already incurred till such stage, with the above components, the total compensation in the case comes to (10,22,356/- + 7,24,032/- + 6,00,000/- + 3,00,000/- + 3,00,000/- + 1,00,000/- + 1,00,000/- + 1,00,000/-) Rs.32,46,388/-, rounded off to Rs.32,47,000/- (Rupees Thirty Two Lakh Forty Seven Thousand Only).

9. The award is modified accordingly. Needless to add, it shall carry interest as levied by the tribunal.

10. The entire enhanced portion of the award shall be paid by the second respondent (insurer) with up-to-date interest by requisite deposit with the tribunal within thirty days. Upon such deposit being made, the tribunal shall release it to the appellant in the form of fixed

deposit interest bearing receipt, to be taken out from a nationalized bank for a period of ten years with right to draw periodic interest.

11. The appeal stands disposed of in above terms.

SEPTEMBER 15, 2017

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R.K.GAUBA, J.

