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

Decided on: 27th October, 2017

+ **MAC APPEAL No. 618/2011**

JAIVINDER SINGH @ JAI BINDER SINGH Appellant
Through: None.

versus

ISHWAR CHAND SHARMA & ORS. Respondents
Through: Mr. Kanwal Chaudhary, Adv.
for R-3.

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

JUDGMENT (ORAL)

1. The appellant, then aged 31 years, earning his livelihood as a granthi in Gurudwara Sheesh Ganj was riding on motorcycle bearing registration no. DL 7S AU 7237 on 06.06.2009. He met with an accident due to negligent driving of motor vehicle described as Tempo Tata 709 bearing registration no. DL 1LD 0466 which was admittedly insured against third party risk with the third respondent (insurer) for the period in question, it being registered in the name of the second respondent and driven by first respondent. He filed accident claim case (MACT No. 530/2009) on 10.07.2009 seeking compensation for the injuries suffered claiming, *inter alia*, that he had been rendered permanently disabled. The tribunal held inquiry in which initially all the three respondents chose to suffer the proceedings *ex-parte*. The

insurer, however, filed its written statement and joined the proceedings later. The tribunal, by judgment dated 13.03.2011, returned a finding that the accident had occurred due to negligent driving of the vehicle in question and awarded compensation in the total sum of Rs. 3,81,169/-, holding the insurer liable to pay with interest, calculating it thus:-

S.No.	Heads	Compensation
1.	Compensation for pain & sufferings	Rs. 60,000/-
2.	Compensation for expenses incurred on medical treatment	Rs. 1,91,169/-
3.	Compensation for special diet	Rs. 5,000/-
4.	Compensation for loss of conveyance charges	Rs. 5,000/-
5.	Compensation for loss of income	Rs. 20,000/-
6.	Compensation on account of engaging attendant	Rs. 10,000/-
7.	Compensation on account of loss of earning capacity due to disability	Rs. NIL
8.	Compensation on account of inconvenience, hardship, discomfort, disappointment	Rs. 50,000/-
9.	Compensation for loss of enjoyment of amenities of life & general damages	Rs. 40,000/-
	Total	Rs. 3,81,169/-

2. The claimant filed the present appeal raising the grievance about the inadequacy of the award primarily contending that the tribunal had fallen into error by not awarding compensation for loss of future earnings due to disability suffered for the reason there was nothing shown on which it could be inferred that there was any loss of employment.

3. The appeal was put in the category of 'regulars' as per order dated 19.10.2012 to be taken up on its own turn. It earlier came up for exploring the possibility of amicable resolution before the Lok Adalat but with no fruitful results. When it is called out for hearing, there is no appearance on behalf of the claimant.

4. The matter has been heard with the assistance of the counsel for insurance company.

5. On perusal of the tribunal's record, this Court finds substance in the grievance about omission on the part of the tribunal to make any award under the head of loss of earning capacity due to disability. The claimant had proved disability certificate (Ex.P1) issued on 01.06.2010 by board of doctors of Baba Saheb Ambedkar Hospital, Govt. of NCT of Delhi. It certifies that the appellant had been rendered permanently disabled, he being a case of post traumatic knee condradura and deformity of right knee, such disability being 65% in relation to the said lower limb. The said condition was not disputed by any of the respondents. The ground that there was no termination of services on this account may be correct so as to not award any compensation for the period the claimant assumably would remain in service. But then, the employment would not continue lifelong.

Assuming the services would come to an end in normal course by the time the claimants turns 60, compensation under the head of future income due to disability on the multiplier of 9 deserves to be awarded.

6. Since the evidence would show that he was in regular employment of the Gurudwara at a monthly salary of Rs. 5822, having regard to the age at which the accident occurred and adding the element of future prospects to the extent of 50%, the loss of income in earning capacity on account of functional disability which in the given facts and circumstances is assessed at 30%, would work out to $(5822 \times 150 \div 100 \times 30 \div 100 \times 12 \times 9)$ Rs. 2,82,949.20, rounded off to Rs. 2,83,000/- (Rupees Two lacs and Eighty three thousand only).

7. The awards under the other heads of damages do not call for any interference.

8. Thus, the award of compensation in favour of the appellant is increased by Rs. 2,83,000/-. It shall carry interest as levied by the tribunal. The insurer is directed to satisfy the enhanced award by requisite deposit with the tribunal within 30 days making it available to be released.

9. The appeal is disposed of in above terms.

R.K.GAUBA, J.

OCTOBER 27, 2017

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