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

Decided on: 1st August, 2017

+ **MAC APPEAL No. 274/2009**

SWATI SHAMA

..... Appellant

Through: Mr. Bankey Bihari & Mr.
Anant K. Vatsya, Advs.

versus

**HIMACHAL PRADESH ROAD TRANSPORT
CORP.**

..... Respondent

Through: Mr. Jagjit Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant, then 26 years old, was travelling in bus bearing registration No. HP 38B 7516 (the bus) of the respondent on 28.06.2005 from Hamirpur in State of Himachal Pradesh to Jammu in State of Jammu & Kashmir. At about 5 a.m. on the next morning, when the bus had reached at Vijaypur near National Highway, Swankha Morh due to negligent driving, the bus went out of control and there was an accident resulting in several persons including the appellant suffering injuries. The appellant instituted accident claim case (suit no. 963/2008) on 16.01.2007, before the motor accident claims tribunal seeking compensation. After inquiry, the tribunal, by

judgment dated 18.02.2009, awarded compensation in favour of the appellant computing at Rs. 2,88,762/- thus:-

<i>Cost of medicines</i>	:	<i>Rs. 1,48,312.00</i>
<i>Attendant charges</i>	:	<i>Rs. 25,450.00</i>
<i>Pain & sufferings</i>	:	<i>Rs. 50,000.00</i>
<i>Loss of amenities of life</i>	:	<i>Rs. 50,000.00</i>
<i>Special diet</i>	:	<i>Rs. 10,000.00</i>
<i>Conveyance</i>	:	<i>Rs. 5,000.00</i>
<i>Total</i>	:	<i>Rs. 2,88,762.00</i>

2. The present appeal was filed seeking enhancement and is pressed primarily on the contention that the tribunal has failed to make any award under the head of loss of income due to the period of treatment and the loss of future income due to disability suffered.

3. It is noted that the tribunal found on the basis of documentary evidence (Ex.P-4) that the claimant had suffered multiple injuries. The claimant had appeared as witness (PW-1), on the strength of her own affidavit (Ex.P-1), in which she had testified that she had remained under treatment unable to perform her duties, confined to bed and rendered permanently disabled. She proved the medical records (Ex.PW-1/K and Ex.P-7 collectively), discharge (Ex.P-6) and disability certificate (Ex.P-5). She also examined Dr. Sanjay Sood (PW-2), a member of the medical board of Dr. Rajender Prasad Medical College, Kangra Himachal Pradesh which had examined her leading to the issuance of the said disability certificate (Ex.P-5). The disability certificate indicates the appellant had suffered collapse of the bones (D-7, D-6, D-8 & D- 9) and of hip joint on the right side.

The tribunal while considering the said disability (Ex.P-5) was of the opinion (para 14) that it had certified her disability to be temporary to the extent of 25%. It is clear from perusal of the said document that the tribunal read or construed the said document properly. It is a certificate affirming the disability to be permanent and to the extent of 25% which is also the effect of the evidence of PW-2, one of the members of the board of doctors which had examined the appellant. The respondents did not lead any evidence in rebuttal.

4. In above facts and circumstances, the loss of income for the period of treatment as also loss of income on account of permanent disability in the future deserve to be added to the award of compensation. This not having been done by the tribunal, apparently on account of erroneous assumption that the disability was not permanent, the needful correction must be made now. The appellant did not lead any formal evidence as to the income accruing to her during the relevant period, the learned counsel for the appellant now fairly concedes that in absence of such material, notional income may be assessed on the basis of minimum wages payable to a graduate during the relevant period.

5. Since the accident had occurred on 28.06.2005, it is assumed that the appellant would be earning Rs. 3804.90 per month. Having regard to the nature and the part of the body affected the medical disability is treated as the functional disability. The appellant would have turned 27 at the end of one year period of treatment. The loss of future income, thus, would need to be calculated with the multiplier of 17.

6. Thus, the loss of income for one year of the period of treatment is calculated as (3804.9×12) Rs. 45,658, rounded off to Rs. 45,700/. The loss of future income is calculated as $(3804.9 \times 25 \div 100 \times 12 \times 17)$ Rs. 1,94,049.9, rounded off to Rs. 1,95,000/-.

7. The award, thus, needs to be enhanced by Rs. 45,700 + 1,95,000, Rs. 2,40,700/-. Ordered accordingly.

8. Needless to add, the enhanced portion of the award shall carry interest as levied by the tribunal and shall be paid by the respondent by requisite deposit with the tribunal within 30 days. It shall be released to the appellant in the form of fixed deposit receipt in a nationalized bank in her name for a period of seven years with right to draw monthly interest.

9. The appeal is disposed of in above terms.

AUGUST 01, 2017

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R.K.GAUBA, J.

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