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

Decided on: 09th August, 2017

\+ MAC.APP. 284/2009

NARESH KUMAR SINGH ..... Appellant

Through: Mr. Manish Maini, Advocate

versus

SUBHASH CHAND & ORS. ..... Respondents

Through: Mr.Pankaj Gupta for Ms. Suman Bagga, Adv. for R-4

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

<u>JUDGMENT (ORAL)</u>

1. The appellant, Naresh Kumar Singh, then aged 32 years, earning his livelihood as rickshaw puller, met with a motor vehicular accident at about 8.50 p.m. on 24.10.2006 due to rash driving of a car bearing registration no.HR-02/K-7111, it admittedly insured against third party risk with ICICI Lombard General Insurance Company Ltd. (fourth respondent/ insurer). As a result of the injuries sustained, he was rendered permanently disabled, the disability being certified (per Ex. PW2/1) on 12.09.2008 by board of doctors of Sanjay Gandhi Memorial Hospital of the Govt. of NCT of Delhi to be permanent to the extent of 78% in relation to the full body, it arising out of the head injury resulting in quadric-paresis with right facial palsy, to put it

simply, paralysis of one side of the body including both limbs of that side. He filed an accident claim case (petition no.232/2007), on 08.03.2007, seeking compensation impleading the driver, owners and the insurer of the said vehicle as respondents.

2. After inquiry, the Motor Accident Claims Tribunal (Tribunal), by its judgment dated 07.02.2009, held that the accident had occurred due to the negligent driving of the above mentioned vehicle. It awarded compensation in the total sum of Rs.4,66,622.96 and directed the insurer (fourth respondent) to pay the same with interest at the rate of 8% p.a, the said amount being inclusive of Rs.3,51,336.96 towards loss of future earning capacity, on account of disability, it being assessed as 78% functional disability, besides Rs.25,000/- towards pain and injury, Rs.40,286/- towards medical expenses, Rs.20,000/- towards special diet and conveyance and Rs.30,000/- towards future medical expenses.

3. By the appeal at hand, the appellant raises grievance stating that award of compensation granted is deficient.

4. At the hearing, it was argued on behalf of the appellant that since the evidence shows that he was pulling a rickshaw with cargo weighing 350 kg., the minimum wages of semi-skilled worker should have been adopted as the notional earnings. This court is unable to accept this submission as no special skills are shown to have been employed or acquired by the appellant. The calculation of loss of earnings on the basis of minimum wages (Rs.3,312/-) payable to an unskilled worker during the relevant period, thus, have been correctly adopted by the Tribunal.

5. The Tribunal, however, is found to have committed an error by making a deduction of one-third towards miscellaneous expenses which in a case of this nature was uncalled for. The functional disability being 78%, the loss of future earnings had to be calculated with the multiplier of 16. Thus computed, the loss of future earnings due to disability is calculated as (Rs.3312 x 78/ 100 x 12 x 16) Rs.4,96,005.12.

6. The next submission of the appellant concerns the non-pecuniary damages awarded in the sum of Rs.25,000/- and future medical expenses to be in the sum of Rs.30,000/-. It is noted that the evidence had shown that the claimant would have required continued medical assistance for 3-4 years, such expenditure having been assessed to be in the minimum of Rs.2,000/- p.m. The period of one year having already passed by when such opinion (Ex. PW1/87) came, the medical expenditure expected to be incurred for the remaining period of about three years should have been properly calculated. Taking Rs.2,000/- as the average monthly expenditure, the award under the head of future medical expenses is computed as (Rs.2,000/- x 12 x 3) Rs.72,000/-. Thus, in place of Rs.30,000/-, the award towards future medical expenses needs to be raised to Rs.72,000/-.

7. Given the nature of injuries suffered, and the resultant effect they would have on his entire future, award of Rs.25,000/- towards pain and suffering is highly deficient. Not only this, compensation on account of loss of amenities of life also should have been added. In the opinion of this court, Rs.1,50,000/- each under both the said heads would be just and proper to be added to the compensation.

8. Adding the compensation towards actual medical expenses and the awards made on account of special diet and conveyance, the total compensation in the case comes to (Rs.4,96,005/- + Rs.1,50,000/- + Rs.1,50,000/- + Rs.40,286/- + Rs.20,000/- + Rs.72,000/-) Rs.9,28,291/-, rounded off to Rs.9,29,000/-.

9. The award is enhanced accordingly.

10. 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*.]

11. The fourth respondent is directed to deposit the requisite amount on account of the above modification of the award with the tribunal within 30 days making it available to be released. The amount to be now deposited and released to the claimant shall be in the form of an interest bearing fixed deposit receipt taken out from a nationalized bank in the name of the appellant for a period of ten years with right to draw monthly interest.

12. The appeal is disposed of in above terms.

R.K.GAUBA, J.

AUGUST 09, 2017
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