

\$~R-227

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

Decided on: 19th September, 2017

+ MAC.APP. 477/2010

RAJESH KUMAR

..... Appellant

Through: Nemo.

Versus

ASHOK KUMAR & ORS.

..... Respondents

Through: Mr. Pankaj Seth, Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant, then aged about 24 years, engaged in the work of tailoring, suffered injuries in a motor vehicular accident that occurred on 23.09.2000 at about 9:55 AM, involving negligent driving of tanker bearing registration No.HR-38C-5123, admittedly insured against third party risk with the third respondent (insurer). He instituted accident claim case (Suit No.343/2004) on 26.08.2004 seeking compensation, impleading besides the insurer, the driver and registered owner of the tanker as party respondents, the driver later being deleted from the fray as he passed away. After inquiry, the tribunal, by judgment dated 06.03.2010, accepted the claim for compensation on account of injuries suffered due to negligent driving of the tanker. It awarded compensation in the total sum of

Rs.3,23,192/-, fastening the liability on the insurer to pay with interest @ seven and half (7.5%) per annum, the said amount inclusive of Rs.2,28,000/- towards treatment expenses, Rs.70,000/- towards pain and suffering, loss of amenities of life and loss of marriage prospects, Rs.5,000/- towards special diet and conveyance, and Rs.20,192/- towards loss of income.

2. The present appeal was filed by the claimants seeking enhancement of compensation. The appeal was admitted and directed to be put in the category of '*Regular Matters*' to be taken up, on its own turn, by order dated 19.04.2012. Thereafter, it was taken up for exploring the possibility of amicable settlement through Lok Adalat, but with no effective results. When it is taken up for hearing, there is no appearance on behalf of the appellant. The submissions of the learned counsel for the insurer have been heard. The record has been perused.

3. It is noted that the injuries suffered by the appellant included fracture of the pelvic bone and ruptured urethra though there was no proof adduced of such injuries having resulted in any permanent disability. Evidence, however, would show that the claimant had undergone prolonged treatment including surgical procedure. It is on this account that the tribunal found it proper to award compensation for loss of income for a period of eight months.

4. The submission in appeal that the income should have been assumed to the extent of Rs.5,000/- per month, cannot be accepted, in absence of any formal proof of such income. At the same time, going

by the nature of avocation, there is no reason why the minimum wages of a semi-skilled person should not have been applied, such wages being Rs.3331.90, on the relevant date. The calculation of loss of income for the period of eight months deserves to be enhanced to (3331.90×8) Rs. 26,655.2 rounded off to Rs. 26,660/-.

5. Having regard to the nature of injuries and the prolonged treatment undergone, the composite award of Rs.70,000/- towards pain and suffering, loss of amenities of life and loss of marriage prospects is found to be grossly inadequate. The amount of Rs.70,000/- is treated as compensation solely towards pain and suffering and, in addition, Rs.50,000/- each are awarded for loss of amenities of life and loss of marriage prospects.

6. In above view, the compensation in the case deserves to be increased by $(26,660/- + 50,000/- + 50,000/-)$ Rs.1,26,660/-. Compensation is, thus, increased to $(3,23,192/- + 1,26,660/-)$ Rs.4,49,850/- rounded off to Rs.4,50,000/-. (Four Lakhs Fifty Thousand Only.)

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

8. The award is modified accordingly.

9. The third respondent (insurer) National Insurance Co. Ltd. is directed to satisfy the enhanced award by requisite deposit with the

tribunal within thirty days, making it available to be released to the appellant.

10. The appeal stands disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 19, 2017

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