$~R-527

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

Decided on: 21st November, 2017

\+ MAC APPEAL 709/2012

NAVEEN ..... Appellant
Through: Ms. Aruna Mehta, Advocate

versus

ROHIT KUMAR & ORS. ..... Respondents
Through: Mr. Pankaj Seth, Adv. for R-3

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

JUDGMENT (ORAL)

1. The appellant was the claimant before the tribunal in accident claim case (MACT 124/2007) instituted on 06.02.2007 which was decided by judgment dated 15.11.2011 whereby compensation in the total sum of Rs.1,50,703/- was awarded for injuries suffered by him in a motor vehicular accident that occurred on 27.11.2006 due to negligent driving of a motor vehicle described as Tata Sumo bearing registration no.HR-55-BT-2466 admittedly insured against third party risk for the period in question with the third respondent (insurer). The Tribunal directed the insurer to pay the said compensation.

2. The appeal at hand was filed with the grievance that the compensation is inadequate as there is no award made towards loss of future earnings on account of permanent disability and the non-pecuniary damages under the heads of pain and suffering and loss of

amenities of life are deficient. It is also the grievance that attendant charges were also wrongly not included.

3. During the pendency of the appeal, on request of the appellant, he was granted opportunity to lead additional evidence. He examined Dr. Arun Yadav (AW-1) who was member of the board of doctors of Hindu Rao Hospital which had evaluated the appellant and issued disability certificate (Ex. AW1/1), according to which the appellant suffers from permanent disability to the extent of 17% resulting from injuries to the left shoulder making the movement restricted and painful. The tribunal declined to give any benefit on this account on the ground that the functional disability was not affected.

4. The appellant was self-employed person carrying on the business of auto parts. Given the nature of the job from which he earns his livelihood and the nature of the disability, it cannot be said that there would be no effect on his earning capacity. At the same time, however, the medical opinion about the disability cannot be equated with the functional disability. In the opinion of this court, the functional disability deserves to be assessed at 8% and the compensation towards loss of future earning accordingly granted.

5. The tribunal had found that the annual income of the claimant was Rs.1,02,650/- after deduction of income tax. According to the record, he was about 26 years old at the relevant point of time and, thus, the multiplier of 17 is to be adopted. The loss of future earnings due to functional disability is, thus, computed as [Rs.1,02,650/- x 140/100 x 8/100 x 17] Rs.1,95,445.6/-, rounded off to Rs.1,95,446/-.

6. In the opinion of this court, the awards under the other heads of damages as granted by the tribunal are just and adequate. Thus, the total compensation is computed as [Rs.1,50,703/- + Rs.1,95,446/-] Rs.3,46,149/-, rounded off to Rs.3,47,000/- (Rupees Three lakh and forty seven thousand only).

7. The award is modified accordingly. Needless to add, 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 to the claimants. The amount to be now paid in terms of the modified judgment shall be released to the claimant in the form of an interest bearing fixed deposit receipt taken out from a nationalized bank for a period of seven years with right to draw periodic interest.

8. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 21, 2017
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