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

Decided on: 20th September, 2017

+ **MAC.APP. 517/2010**

SHAHZAMA

..... Appellant

Through: None

versus

RAKESH KUMAR & ANR

..... Respondents

Through: Ms. Harsh Lata for Ms. Shantha
Devi Raman, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant, then aged 27 years, suffered injuries in a motor vehicular accident that took place on 16.10.2005 when the motorcycle bearing registration no.DL-7SZ-6515 driven by him was hit by a truck bearing registration no.HR-63B-4498 which had come in a rash manner. He filed accident claim case (suit no.25/06) seeking compensation.

2. After inquiry, the Motor Accident Claims Tribunal (Tribunal), by judgment dated 29.03.2010, which is impugned by the appeal at hand, upheld the case for compensation on the ground that the accident had occurred due to the negligent driving of the said truck. It awarded compensation in the sum of Rs.14,27,200/- fastening the

liability on the second respondent (insurer) to pay with interest at the rate of 7.5% p.a. The compensation thus awarded was calculated as under :-

Medicines and medical treatment	Rs.18,000/-
Loss of earning capacity due to disability	Rs.9,79,200/-
Loss of amenities of life	Rs.1,50,000/-
Loss of future prospects of marriage	Rs.1,00,000/-
Pain and suffering	Rs.1,50,000/-
Conveyance and special diet	Rs.30,000/-
Total	Rs.14,27,200/-

3. The appellant feeling aggrieved came up with the present appeal submitting that the compensation awarded is deficient.

4. The appeal was admitted and directed to be put in the category of 'regulars' by order dated 22.11.2010. On being taken up, there is no appearance on behalf of the appellant.

5. The appeal has been considered with assistance of the counsel for the second respondent and upon perusal of the inquiry before the tribunal.

6. It is noted that the appellant had proved that the injuries suffered by him included compound fracture of the frontal region of the head which required surgical procedures to be undergone in which ventriculo peritoneal stunt was put in the vertical end of the brain and another in the abdominal cavity. The aftermath of the injuries suffered included loss of sight in the right eye and extremely poor vision in the other eye, the medical opinion given by Dr. B. Ghosh (PW-3) of Guru Nanak Eye Centre, Delhi leading to disability certificate (Ex. PW3/A)

confirming that he has been rendered permanently visually disabled person, such disability being 100%. The evidence also showed that the appellant had to undergo neurological treatment in the Lok Nayak Hospital and G.B. Pant Hospital, his condition being such that he is likely to suffer fits in future, the damage to the brain parenchyma being such as cannot be repaired. It is on the basis of such assessment that the tribunal concluded the functional disability to be 100% and has calculated the loss of earning capacity on account of the disability leading to the award noted above.

7. The grievance of the appellant in appeal was that the calculation of loss of future income due to disability has been made with the help of minimum wages of unskilled labourer and his evidence that he was earning Rs.5,500/- as supervisor with a private company was ignored. It is noted that the said claim of private service was not substantiated by any cogent proof. In these circumstances, the approach of the tribunal cannot be questioned.

8. The grievances of the appellant in appeal, however, also related to the inadequacy of awards under other heads of damages. This grievance is found to be correct. The tribunal has not made any provision for future needs of medical treatment or for services of an attendant. Though given the reason for the permanent disability mentioned above, the case of the appellant cannot be equated with a person who is rendered paraplegic, the condition being in relation to the eye sight, the need for such support required suitable award under that head as well. Similarly, the awards under the heads of loss of amenities of life and pain and suffering are found to be deficient.

9. In above view, an amount of Rs.50,000/- is added towards future medical expenditure while the awards under the heads of loss of amenities of life on one hand and pain and suffering on the other are increased to Rs.2,00,000/- each. This would mean the award would stand enhanced by Rs.1,50,000/- (Rupees one lakh and fifty thousand only). Ordered accordingly.

10. Following the consistent view taken by this Court, the rate of interest is increased to 9% per annum (nine percent) 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 second respondent is directed to satisfy the enhanced award by requisite deposit with the tribunal within thirty days, making it available to be released to the claimant.

12. The appeal is disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 20, 2017

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