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

Decided on: 25th July, 2017

\+ MAC.APP. 413/2009

SHER SINGH ..... Appellant
Through: Mr. S.N. Parashar, Advocate

versus

VINOD PANDEY & ORS. ..... Respondents
Through: Mr. Pankaj Gupta, Advocate for Ms. Suman Bagga, Advocate for R-2.

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

JUDGMENT (ORAL)

1. The appellant, a qualified Ayurveda Physician, having taken voluntary retirement from service, then aged 67 years, had suffered injuries in a motor vehicular accident that occurred on 15.06.2014 on account of negligent driving of scooter no.DL-5SS-2673, which was admittedly insured against third party risk for the period in question with the second respondent herein. He filed accident claim (MACT No.552/08/2004) on 20.09.2004 seeking compensation. His claim based on fault liability was accepted by the judgment dated 21.01.2009 and award of Rs.72,400/- was made with interest in his favour, the liability being fastened against the second respondent.

2. By way of present appeal he has sought enhancement of the compensation.

3. The impugned award shows that the tribunal noted the evidence that the appellant had suffered fracture of tibia and fibula bones and, thus, required hospital treatment from 27.07.2004 to 04.08.2004. The injuries, however, left permanently disabled, this being proved by disability certificate Ex.X1, issued by board of doctors of GTB hospital on 21.09.2005. As per the said disability certificate, he suffers from locomotor disablement which is assessed to be 37% in relation to left lower limb, it being non-progressive but not likely to improve and, thus, permanent.

4. The tribunal awarded lumpsum amount of Rs.50,000/- towards loss of income on account of permanent disability, pain and agony, etc. and added Rs.22,350/- which was proved to be the expenditure incurred for treatment.

5. Indeed, the loss of earnings on account of disability should also have been separately assessed. The disability of 37% in relation to left lower limb, in view of age, nature of avocation and the after-effect may be taken as 15% functional disability so as to result in loss of the earning capacity. Since the claimant was 67 years old at the relevant point of time, the loss of future income on this account may be calculated with the multiplier of 5 on the assumed income of Rs.3623/- per month, as would be minimum wages for graduates at the relevant point of time. The loss of future income, by this reckoning comes to (3623/- x 15/100 x 12 x 5) Rs.32,607/-.

6. Keeping in view the advanced age of the claimant, and the lasting effect that the disability would have on the quality of his

remaining life, the lumpsum award of Rs.50,000/- under the non-pecuniary heads is increased to Rs.60,000/-.

7. The total compensation, thus, comes to (32,607/- + 60,000/- + 22,350/-) Rs.1,14,957/- which is rounded off to Rs.1,15,000/-.

8. The award is modified accordingly. Needless to add, it shall carry interest as levied by the tribunal.

9. The second respondent (insurance company) is directed to satisfy the modified award by requisite deposit with the tribunal within thirty days, making it available to the claimant.

10. The appeal is disposed of in above terms.

11. Dasti.

R.K.GAUBA, J.

JULY 25, 2017
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