$~R-582

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 28th November, 2017

\+ MAC.APP. 934/2012 and CM No.14756/2012

TUNTUN RAY ..... Appellant

Through: Nemo.

Versus

NISHU PAL & ORS. ..... Respondents

Through: Mr. D.K. Sharma, Adv. for R-3.

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

JUDGMENT (ORAL)

1. The appellant, then aged 23 years, (born on 02.05.1988) was present with certain other public persons on the footpath of the road near Inter State Bus Terminus (ISBT) at Kashmere Gate, Delhi on 08.05.2011 at about 05:20 hours, awaiting the public transport when bus bearing registration No.DL-1PB-3844 driven in a negligent manner hit against him and other such persons present at the spot. As a result, several persons including the appellant suffered injuries, the injuries inflicted on the body of the appellant having rendered him permanently disabled, since in spite of medical aid and treatment, his right lower limb had to be amputated. He was examined by board of doctors of Hindu Rao Hospital which issued disability certificate (Ex.PW-4/3) stating that he is a case of permanent physical impairment to the extent of 98% in relation to the right lower limb, he being a case of disarticulation of right hip with pelvic fracture,

perineal injury and bladder injury besides other injuries, the said condition having been affirmed on oath by Dr. Arun Yadav (PW-8) examined at the inquiry.

2. The tribunal, by judgment dated 12.04.2012, which was common to the claim case (Suit No.329/2011) of the appellant and other nine cases, having arisen out of the same accident, held that the accident had occurred due to negligence on the part of the bus driver, awarded compensation in the total sum of Rs.11,42,590/- in favour of the appellant, *inter alia,* on the finding that the functional disability suffered is to the tune of 50%, the liability to pay having been fastened on the third respondent (insurer) with interest @ 9% per annum.

3. The appeal at hand was filed with the grievance that the compensation awarded is inadequate. It was put in the list of 'Regulars' as per order dated 10.03.2016. When it is called out for hearing, on its own turn, there is no appearance on behalf of the appellant. The learned counsel for the insurer has been heard and with his assistance the record perused.

4. Having regard to the nature of injuries suffered and the amputation of one lower limb, the dispensation in similarly placed case which was subject matter of MAC APP.1068/2016, titled *National Insurance Company Ltd vs Priti Gupta and Ors.*, decided on 24.08.2017 deserves to be followed. The functional disability of the claimant is treated as 80% (eighty per cent) and the loss of future income due to disability is computed accordingly.

5. The tribunal had assumed the income of the claimant with the help of minimum wages at Rs.7098/- but it did not include the element of future prospects of increase in income. Following the ruling of a Constitution Bench of the Supreme Court rendered on 31.10.2017 in *SLP (C) 25590/2014, National Insurance Company Ltd. Vs. Pranay Sethi and Ors.* such factor to the extent of 40% deserves to be added. Invocation of multiplier of 16 was also incorrect, as calculation of loss of future income due to disability requires to be calculated on 18 as the multiplier, this having regard to the age of the claimant on the relevant date.

6. In view of above, the loss of future income due to disability is re-calculated as (7098/- x 140/100 x80/100 x 12 x 18) Rs. 17,17,148.16 rounded off to Rs.17,17,148/-. Since the tribunal had awarded Rs.6,81,408/- under this head, the award needs to be increased by (17,17,148 - 6,81,408) Rs.10,35,740/-.

7. It is noted that no award under the head of loss of marriage prospects has been made. An amount of Rs.1,00,000/- under the said head is, therefore, added.

8. Thus, the total compensation payable in the case comes to (11,42,590 + 10,35,740 + 1,00,000) Rs.22,78,330/- rounded off to Rs.22,79,000/- (Rupees Twenty Two Lacs Seventy Nine Thousand Only).

9. The award is enhanced accordingly. It shall carry interest as levied by the tribunal.

10. The insurer is directed to satisfy the enhanced award by requisite deposit with the tribunal within thirty days.

11. The amount now payable under the modified award will be released to the claimants in the form of interest bearing fixed deposit receipt to be taken out from a nationalized bank for a period of ten years with right to draw periodic interest.

12. The appeal and pending application stand disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 28, 2017
vk