

\$~R-391

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

Decided on: 3rd November, 2017

+ **MAC APPEAL 829/2011**

SANJAY OBEROI

..... Appellant

Through: Mr. Jatinder Kamra, Advocate

versus

MANOJ BAGERIYA & ORS.

..... Respondents

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

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant was the claimant before the Motor Accident Claims Tribunal (Tribunal) in an accident claim case (suit no.217/2009) instituted on 02.06.2009 and decided by judgment dated 19.04.2011 which also governs another similar claim case arising out of the same accident. The tribunal held that the claimant had suffered injuries due to the negligent driving of Maxi-Cab bearing Registration no.MP-13-TA-0207, holding the driver and owner of the said vehicle jointly and severally liable. The third respondent (insurer) was held liable to indemnify and pay the compensation which was determined in the total sum of Rs.3,11,700/-, it having been calculated thus :-

Medicines and medical treatment	Rs.1,43,900/-
Loss of wages	Rs.26,700/-

Pain and suffering	Rs.35,000/-
Conveyance & special diet	Rs.16,000/-
Loss of earning capacity due to disability	Rs.80,100/-
Attendant charges	Rs.10,000/-
Total	Rs.3,11,700/-

2. It may be mentioned here that the claimant had proved before the tribunal that he is a graduate (Ex. PW1/5) and was earning his livelihood from the business of printing and binding. Though the income claimed by the appellant was not accepted, the tribunal went by the notional income of Rs.4450/- on the basis of minimum wages payable to a graduate at the relevant time. The claimant had proved through Dr. Satish Kumar (PW-6), Sr. Orthopedic Surgeon of Dr. Ram Manohar Lohia Hospital, that he has been rendered permanently disabled, such physical impairment being on account of his inability to lift, move or rotate his right arm beyond a point. The tribunal took the functional disability at 10% and calculated the loss of earning capacity accordingly.

3. By the appeal, the claimant seeks enhancement of the compensation on the ground that in calculating the loss of earning capacity due to disability to the extent of 10%, the tribunal has not included the element of future prospects of increase in the income. It is also the grievance that the award under the head of pain and suffering is inadequate, further deficiency being on account of

omission to grant any damages under the head of loss of amenities of life.

4. Having heard the learned counsel and perused the record, all the above contentions are found to be deserving acceptance.

5. Following the ruling of the 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.*, having regard to the age (40 years) of the claimant, he being an employed person, the element of future prospects of increase to the extent of 40% has to be added. Thus, the loss of earning capacity due to disability is re-computed as $[Rs.4,450 \times 140/100 / 10 \times 12 \times 15]$ Rs.1,12,140/-. The award under the head of loss of earning capacity due to disability, thus, would stand increased by $[Rs.1,12,140/- (-) Rs.80,100/-]$ Rs.32,040/- (Rupees Thirty Two thousand and forty only).

6. Having regard to the nature of the injuries suffered, the period of treatment and the permanent disability that would affect the quality of life of the claimant in future, the damages under the head of pain and suffering are increased to Rs.50,000/- and an amount of Rs.25,000/- towards loss of amenities is added. Thus, there shall be a further increase in the award by $[Rs.15,000/- + Rs.25,000/-]$ Rs.40,000/- (Rupees forty thousand only).

7. The award is, therefore, increased to $[Rs.3,11,700/- + Rs.32,040/- + Rs.40,000/-]$ Rs.3,83,740/-, rounded off to Rs.3,84,000/- (Rupees Three lakh and eighty four thousand only). It is modified accordingly. Needless to add, the enhanced award shall carry interest as levied by the tribunal.

8. 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 claimant.
9. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 03, 2017

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