$~R-114

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

***Decided on: 17th August, 2017***

\+ MAC.APP. 506/2009

LAKSHMAN SINGH @ SONU ..... Appellant

Through: Nemo.

versus

DAYA NAND AND ORS. ..... Respondents

Through: Mr. Arun Yadav, Advocate for R-3.

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

**<u>JUDGMENT (ORAL)</u>**

1. The appellant suffered injuries in a motor vehicular accident that occurred on 07.07.2007 due to negligent driving of motor vehicle described as Eicher Canter bearing registration No.HR-63A-1332, which was admittedly insured against third party risk with the third respondent (insurer) covering the period in question. The injuries suffered included compound fractures in the lower limbs, they leading to amputation of the left leg below knee, and of second and third metatarsals of the right foot, rendering him permanently disabled, the disability having been assessed by a board of doctors of Safdarjung hospital (Ex.PW-1/2) to be permanent to the extent of sixty nine per cent (69%) in relation to both lower limbs.

2. On his claim petition (Suit No.662/2008), instituted on 19.09.2007, the Motor Accident Claims Tribunal (the tribunal), after inquiry, awarded compensation in the sum of Rs.4,12,400/- and directed the insurer to pay the same with interest @ 7.5% per annum.

3. This appeal was filed by the appellant seeking enhancement of the compensation. Notice was issued only to the third respondent (insurer) whose presence has been secured. The matter was directed to be shown in the category of *'FINALS'* as per order dated 19.05.2010. When it is taken up for hearing, none appears today on behalf of the appellant for assistance.

4. Having hearing the learned counsel for the third respondent, this court finds case made out for enhancement of the compensation.

5. It is noted that the tribunal was satisfied that the appellant was earning his livelihood as a driver. Though the income claimed was not accepted and the earnings were assumed on the basis of minimum wages payable to skilled worker (Rs.3900/- per month) at the time of accident, for reasons which cannot be fathomed, the tribunal assumed the functional disability to be to the extent of 40% and computed the loss of earning capacity due to disability on that basis.

6. Having regard to the nature of disability, and the provisions contained in first Schedule of the Employees Compensation Act, 1923, the functional disability deserves to be assessed at the same level as certified by the board of doctors vide Ex.PW-1/2. The award, thus, would need to be rectified appropriately, the calculations being made with the multiplier of 18 instead, as the choice of multiplier of

17 taken by the tribunal was also erroneous, given the fact that the claimant was only 22 years old at the relevant point of time.

7. In the case reported as *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, Supreme Court, *inter-alia*, ruled that the element of future prospects of increase in income will not be granted in cases where the deceased was "self employed" or was working on a "fixed salary". Though this view was affirmed by a bench of three Hon'ble Judges in *Reshma Kumari & Ors. Vs. Madan Mohan & Anr.*, (2013) 9 SCC 65, on account of divergence of views, as arising from the ruling in *Rajesh & Ors. vs. Rajbir & Ors.*, (2013) 9 SCC 54, the issue was later referred to a larger bench, *inter-alia*, by order dated 02.07.2014 in *National Insurance Company Ltd. vs. Pushpa & Ors.,* (2015) 9 SCC 166.

8. Against the above backdrop, by judgment dated 22.01.2016 passed in MAC Appeal No. 956/2012 (*Sunil Kumar v. Pyar Mohd.*), this Court has found it proper to follow the view taken earlier by a learned single judge in MAC Appeal No. 189/2014 (*HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi & Ors.)* decided on 12.1.2015, presently taking the decision in Reshma Kumari (Supra) as the binding precedent, till such time the law on the subject of future prospects for those who are "self-employed" or engaged in gainful employment at a "fixed salary" is clarified by a larger bench of the Supreme Court.

9. Since there was no formal proof of income, the element of future prospects, as is also sought by the appeal at hand, cannot be accepted.

10. Thus, the loss of income on account of permanent disability is now computed as (3900/- x 69/100 x 12 x 18) Rs.5,81,256/- rounded off to Rs.5,82,000/-. Since the tribunal awarded Rs.3,19,000/- under this head, the compensation needs to be increased by (5,82,000/- - 3,19,000/-) Rs.2,63,000/-.

11. While the award under the heads of medicines and medical treatment for Rs.6,000/- was on the basis of actual expenditure, the award under the head of pain and suffering for a sum of Rs.50,000/- needs enhancement. Given the nature of injuries suffered, the said amount is increased to Rs.1,00,000/- thereby necessitating further increase in the award by Rs.50,000/-.

12. Thus, the total increase in the award would be in the sum of (2,63,000/- + 50,000/-) Rs.3,13,000/-, raising the award to (4,12,400/- + 3,13,000/-) Rs.7,25,400/-, rounded off to Rs.7,26,000/-.

13. Following the consistent view taken by this Court [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.], the rate of interest is increased to 9% per annum from the date of filing of the petition till realization.

14. The insurance company is directed to satisfy the enhanced award by requisite deposit with the tribunal within thirty days. Upon such deposit being made, the amount shall be released to the claimants in the form of interest bearing fixed deposit receipt taken out from a

nationalized bank for a period of seven years with right to draw periodic interest.

15. The appeal stands disposed of in above terms.

16. *Dasti.*

**R.K.GAUBA, J.**

**AUGUST 17, 2017**
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