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

Date of Decision: March 14, 2017

\+   **MAC. APP. 618/2008 & C.M.17772/2008, 791/2010**

SARWAN KUMAR ..... Appellant
Through: Mr. Yashpal Laroya, Advocate

versus

SANDEEP SINGH & ORS. ..... Respondent
Through: Mr. Pankaj Seth, Advocate for respondent-Insurer

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
% **(ORAL)**

Appellant, a fruit seller aged about 27 years, had sustained grievous injuries in a road accident on 30th July, 2005. Impugned Award of 30th May, 2008 grants compensation of ₹1,08,681/- with interest at the rate of 7.5% *per annum* to appellant on account of injuries sustained by him in this accident. The facts are already noted in impugned Award and so, need no reproduction. Suffice to note that appellant was driving a two-wheeler scooter when he was hit by Tata Sumo from behind. Apart from the evidence of appellant-Injured, there is evidence of an official of respondent-Insurer. On the basis of evidence led, impugned Award has been rendered. As per order of 29th January, 2009, service is complete in this appeal.

In this appeal, enhancement of compensation is sought. By way of additional evidence, Disability Certificate (Ex.AW1/2) of appellant is proved on record, which indicates that appellant had suffered 35% permanent *locomotor impairment* in relation to right lower limb. As per Medical Certificate of 26th August, 2008 (Ex.AW1/1) issued by Guru Tegh Bahadur Hospital, permanent disability suffered by appellant has resulted in shortening of his leg by 2.5 centimeters.

Learned counsel for appellant-Injured submits that learned Tribunal has erred in holding that appellant was responsible for the accident in question to the extent of 30% and that there was no contributory negligence on part of appellant. To submit so, attention of this Court is drawn to certified copy of Site Plan of the spot and it is submitted that the negligence was entirely of the offending vehicle i.e. Tata Sumo in question. It is further submitted that in the face of the Disability Certificate, *loss of earning capacity* ought to be taken to be 30% and the compensation granted needs to be suitably enhanced. Lastly, it is submitted that the compensation granted under the *non-pecuniary* heads is on the lower side and it needs to be appropriately enhanced.

On the other hand, learned counsel for respondent-Insurer supports impugned Award. Nothing else is urged on behalf of either side.

Upon hearing and on perusal of impugned Award and the evidence on record and Supreme Court's decision in *Raj Kumar v. Ajay Kumar & Another,* 2011 (1) SCC 343 I find that in the face of Site Plan of the spot, it cannot be said that there was any contributory negligence on the part of appellant. Learned Tribunal has erred in holding that contributory negligence of appellant was to the extent of 30%. Further, in view of Disability Certificate and the Medical Certificate, the functional capacity of appellant ought to be taken to be 15% and since appellant was a matriculate, minimum wages applicable are ₹3,613.19/- per month, which are rounded off to ₹3,615/- per month. By applying the multiplier of 17, appellant's *'loss of earning capacity'* is assessed as ₹3,615/- x 12 x 17 x 15% = ₹1,10,619/-, which is rounded off to ₹1,10,620/-.

Learned Tribunal has granted ₹15,000/- towards *'special diet, conveyance, etc.'* and ₹9,000/- towards *'attendant charges'*. The compensation granted under these heads appears to be just and reasonable and hence, it is maintained. However, no case is made out for grant of compensation under the head of *'future medical treatment'* to the tune of ₹15,000/- and hence, it is disallowed. The compensation granted under the head of *'pain and sufferings'* is enhanced from ₹30,000/- to ₹1 lac and compensation of ₹1 lac is granted to appellant under the head of *'loss of amenities of life'*. Thus, compensation payable to appellant is reassessed as under:-

Loss of dependency	*₹1,10,620/-*
Conveyance and special diet	*₹15,000/-*
Attendant Charges	*₹9,000/-*
Pain and sufferings	*₹1,00,000/-*
Loss of amenities of life	*₹1,00,000/-*
Total	*₹3,34,620/-* ***rounded off to ₹3,34,700/-***

The interest granted on the awarded compensation by learned Tribunal @ 7.5% *per annum* is also found to be on the lower side. So, in light of a recent decision of Supreme Court in *Shivakumar M. v. The Managing Director, BMTC,* 2017 SCC Online SC 148, the interest granted on the awarded compensation is enhanced from 7.5% to 9% *per annum.*

In light of the aforesaid, compensation awarded is enhanced from ₹1,08,681/- to ₹3,34,700/-. The enhanced compensation shall carry interest @ 9% *per annum* from the date of filing of the claim petition till the date of deposit of the enhanced amount. Respondent-Insurer is granted four weeks time to deposit the enhanced compensation of ₹2,26,019/-, which is rounded off to ₹2,26,020/-, with interest @ 9% *per annum* and differential interest on the entire awarded amount with learned Tribunal. Upon appellant-Injured furnishing his bank account details, learned Tribunal shall ensure that the enhanced compensation alongwith interest component is directly transmitted into the bank account of appellant-Injured.

This appeal and the applications are disposed of while modifying the impugned Award in aforesaid terms.

(SUNIL GAUR)
JUDGE

MARCH 14, 2017
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