

\$~R-256

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

Decided on: 22nd September, 2017

+ MAC.APP. 732/2010

ARVIND KUMAR

..... Appellant

Through: Nemo.

versus

NARESH KUMAR & 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 tribunal in MACT Claim Petition No.690/2009, which was decided by judgment dated 03.06.2010 returning finding that he had suffered injuries and became permanently handicapped on account of motor vehicular accident that had occurred on the night of 26th and 27th August, 2004 involving negligent driving of a goods carrier (TSR) bearing registration No.HR-55A-3879, admittedly insured against third party risk with the third respondent (insurer) for the period in question. The driver of the said vehicle (first respondent) having been found to be guilty of negligence, the vicarious liability consequently placed on the door of the registered owner of the vehicle (second respondent), the insurer was called upon by the tribunal to pay compensation with interest at the rate of 9% per annum, it having been calculated thus:-

Sl. No.	Head	Amount (in Rs.)
1.	Medicines & treatment	2,00,000/-
2.	Loss of income	86,800/-
3.	Loss of earning power	5,95,200/-
4.	Loss of amenities	25,000/-
5.	Pain and suffering	25,000/-
6.	Conveyance & special diet	25,000/-
	Total	9,57,000/-

2. The appeal was filed by the claimants seeking enhancement of the compensation. The appeal was admitted and directed to be shown in the list of 'Regulars'. When it is taken up today, there is no appearance for the appellant. The matter has been considered with the assistance of the learned counsel for the insurer and by perusal of the tribunal's record.

3. It is noted that the claimant had suffered injuries which included open fracture in the right leg, as described by Dr. Ritabh Kumar (PW-2) a consultant with Indian Spinal Injuries Centre. The fracture was eventually found to be a Grade III compound and severely comminuted fracture of the right femur bone (Ex.PW-2/B) which required surgical procedures that involved emergency debridement and fixation (Ex.PW-2/C), the injury also affecting the right knee. A board of doctors of All India Institute of Medical Sciences (AIIMS) had examined the appellant and issued disability certificate (Ex.PW-1/6). According to the said certificate, the appellant has been rendered

a case of post traumatic deformity of right lower limb, his impairment being to the extent of 40% in relation to the said lower limb.

4. As per the evidence led, the appellant was working as Production Manager with the private entity M/S INCAS International. It does appear that on account of injuries suffered, and presumably prolonged absence from duty as also the resultant permanent handicap, the management of the employer company terminated the services of the appellant on 15.01.2005. In the given facts and circumstances, the tribunal assessed the functional disability to the extent of 25%.

5. The appeal raises grievance that the disability should have been treated as equivalent to the disability opined by the board of doctors. This court finds no substance in the said plea. The tribunal has set out sound reasons to support its conclusion on this score which does not call for any interference.

6. In calculating the loss of future earning on account of disability, the tribunal applied the multiplier of 16. The appeal raises grievance to the effect that since the appellant was 32 years and eight months old, the appropriate multiplier should have been 17. This plea also must be rejected as the choice of multiplier by the tribunal is correct and in accord with the ruling of the Supreme Court in *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121.

7. In the appeal, it has been submitted that the treating doctor had given advice that the claimant would need replacement of knee and in this regard reliance was placed on certificate and estimation vide documents Ex.PW-2/B and Ex.PW-1/C. The record of the tribunal does not seem to contain any document introduced in evidence as

Ex.PW-1/C. The advice vide certificate (Ex.PW-2/B) regarding future need for replacement of the knee was noted by the tribunal. But then, no award towards such anticipated expenditure was added on the ground that the treating doctor when examined was not called upon to confirm such advice.

8. There is, however, a document (Ex.PW-1/5) in the tribunal's record (at page 359) coupled with another document Ex.PW-1/4 (at page 357 of the tribunal's record), both in the nature of estimates given, one for knee replacement and the other for implant removal. Since the focus of the ground taken in the appeal is on the knee replacement, the estimate dated 13.02.2007 vide Ex.PW-1/5 could and should have been taken into consideration by the tribunal. Thus, an amount of Rs.1,81,250/- deserves to be added to the compensation.

9. The appellant had also expressed grievance that the award under the head of loss of amenities in the sum of Rs.25,000/- only was deficient. Having regard to the nature of injuries suffered, this grievance appears to be proper. It is consequently raised to Rs.50,000/-.

10. Thus, there would be a net increase in the award by (1,81,250/- + 25,000/-) Rs.2,06,250/- (Rupees Two Lakhs Six Thousand Two Hundred Fifty Only), enhancing it by (9,57,000/- + 2,06,250/-) Rs.11,63,250/- rounded off to Rs.11,64,000/- (Rupees Eleven Lakhs Sixty Four Thousand Only).

11. The award is modified accordingly. It shall carry interest as levied by the tribunal.

12. The third respondent (the insurer) is directed to satisfy the enhanced award by requisite deposit with the tribunal within thirty days.

13. The appeal stands disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 22, 2017

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