

\$~R-434

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

Decided on: 08th November, 2017

+ MAC.APP. 1147/2011

BHIM SAIN SHARMA

..... Appellant

Through: None

versus

KHALIL KHAN & ORS.

..... Respondents

Through: Mr. Pankaj Gupta and Ms. Suman

Bagga, Advocates for R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant, then aged 62 years, was working as Office Superintendent, *Grah Kalyan Kendra* at a salary of Rs.12,782/- p.m. On 02.03.2007, at about 5.00 a.m. while riding on the scooter with his son he suffered injuries in a motor vehicular accident that was caused due to the negligent driving of a truck bearing registration no.MP-07HB-0159, it resulting in his left leg being amputated rendering him permanently disabled. On his accident claim case (suit no.31/2011), instituted on 19.02.2008, the Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 12.09.2011, returned a finding that the accident had been caused due to the negligent driving by the first respondent (driver), holding the said party and the second respondent (owner of the vehicle) jointly and severally liable. The liability to pay the compensation was fastened against the third

respondent (insurer), it concededly having issued an insurance policy covering third party risk. The amount of compensation was calculated thus :-

Medicines and Medical treatment	Rs.1,57,300/-
Pain and suffering loss of amenities of life	Rs.50,000/-
Conveyance and special diet	Rs.25,000/-
Loss of future earning	Rs.60,669/-
Loss of income due to disability	Rs.1,02,256/-
TOTAL	Rs.3,95,225/-

2. The claimant filed the present appeal submitting that the tribunal had fallen into error by granting deficient award. *Inter alia*, error in mathematical calculation has been pointed out in computation of loss of future earnings.

3. The appeal was admitted and put in the list of regular matters, to be taken up on its own turn, as per order dated 06.11.2012. When it is called out, there is no appearance on behalf of the claimant/appellant. The learned counsel for the insurer has been heard and the record has been perused.

4. The grievance about mathematical error is apparent on the face of record. This in fact could have been brought to the notice of the tribunal for suitable correction by application under Section 152 of the Code of Civil Procedure, 1908 (CPC). Be that as it may, the needful correction now needs to be carried out.

5. The claimant had proved his regular employment with *Grah Kalyan Kendra* at a salary of Rs.12,782/- p.m Since he was 62 years old, there is no occasion for any element of future prospects to be added. However, his functional disability having been assessed at 70%, the loss of future earnings is re-computed as [Rs.12,782/- x 70/100 x 12 x 7] Rs.7,51,581.60, rounded off to Rs.7,51,582/- (Rupees Seven lakh fifty one thousand five hundred and eighty two only). Since the tribunal had granted an amount of Rs.60,669/- under this head, the compensation on this score needs to be enhanced by [Rs.7,51,582/- (-) Rs.60,669/-] Rs.6,90,913/- (Rupees six lakh ninety thousand nine hundred and thirteen only).

6. It is the grievance of the claimant in appeal that though an amount of Rs.1,57,300/- has been included in the award on account of purchase of artificial limb, no provision was made for expenditure required for its maintenance. Having regard to the age at which the disability was suffered, provision for atleast one replacement of artificial limb will have to be made. Thus, an amount of Rs.1,57,300/- is added to the compensation.

7. The evidence on record would show that the treatment had continued for atleast seven months. Undoubtedly, given the nature of the injuries suffered and the amputation that had to be carried out, the need for nursing attendant has to be taken care of. An amount of Rs.31,500/- claimed by the appellant deserves to be added.

8. The awards under the other heads of damages are found to be just and adequate.

9. The total compensation is, thus, increased to [Rs.3,95,225/- + Rs.6,90,913/- + Rs.31,500/- + Rs.1,57,300/-] Rs.12,74,938/-, rounded off to Rs.12,75,000/- (Rupees twelve lakh and seventy five thousand only). The award is enhanced accordingly. The enhanced portion of the award will carry interest at the rate of 9% (nine percent) from the date of filing of the petition till realization. It shall be released to the claimant in the form of a fixed deposit receipt taken out from a nationalized bank in the name of the claimant for a period of five years with right to draw periodic interest.

10. The third respondent shall be liable to satisfy the modified award by requisite deposit with the tribunal within thirty days.

11. The appeal is disposed of in above terms.

NOVEMBER 08, 2017

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R.K.GAUBA, J.

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