$~R-286

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

Decided on: 9th October, 2017

\+ MAC APPEAL 27/2011

NARESH CHAND JAIN ..... Appellant
Through: None.

versus

HABIB ALAM @ TINKU & ORS. ..... Respondents
Through: Mr.Pankaj Seth, Adv. for R-3.

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

JUDGMENT (ORAL)

1. The appellant was the claimant before the Motor Accident Claim Tribunal, he having filed the accident claim petition (Suit No. 98/2009) on 02.06.2005, alongside another claim petition (Suit No.99/2009) filed by his wife, both having suffered injuries in the same motor vehicle accident which had occurred on 27.02.2005 at about 8:30 PM, proven at the Tribunal to have been caused due to negligent driving of motor cycle bearing registration No. DL-7S V-9401 admittedly insured against third party risk for the period in question with the third respondent (insurer). The Tribunal, by judgment dated 25.08.2010, upheld the case for compensation on the principle of fault liability and awarded total compensation in the sum of Rs.2,26,790/- in favour of the appellant calculating it thus:-

Cost on treatment	:	Rs.25,000/-
Pain and sufferings	:	Rs. 5,000/-
Conveyance & Special diet	:	Rs. 4,000/-
For attendant	:	Rs. 4,000/-
Loss of Income	:	Rs. 6090/-
Future loss of Income	:	Rs.1,82,700/-
Total	:	Rs. 2,26,790/-

2. The Tribunal directed the third respondent to pay the aforesaid amount to the appellant with interest @ 7.5 % per annum.

3. Aggrieved with the compensation awarded, the present appeal was filed seeking enhancement. The appeal was put in the category of Regulars as per the order dated 05.04.2013. When it is taken up for hearing, there is no appearance on behalf of the appellant. The matter has been considered with the assistance of the counsel for the third respondent (the insurer) and by a perusal of the record.

4. It is noted that the claimant had suffered injuries that included fracture of the left leg and compound fracture of the hip bone besides other multiple injuries all over the body. The injuries in the left lower limb have resulted in permanent locomotor impairment of the said part of the body, it having been assessed to be permanent disability to the extent of 73% as per the disability certificate (Ex.PW-3/A). As per the evidence, the appellant was engaged in earning his livelihood from his own private business and having regard to these facts, the assessment of the Tribunal taking it to be a case of functional disability to the extent of 50% permanent in nature which is found to be just and appropriate, calling for no interference.

5. It is, however, noted that Tribunal made an error in calculating the loss of future income due to disability by deducting 1/3rd towards miscellaneous expenses which was uncalled for. It is also noted that the Tribunal applied the multiplier of 15 for such purpose going by the age (41 years) in which view such calculations should have resulted in the multiplier of 14 to be adopted.

6. By this appeal, the claimant had raised contentions that his income should have been taken as Rs.4500/- per month. This has no basis. Though he claimed to be earning Rs.5000/- per month from private business, no evidence in this regard was adduced and, thus, the Tribunal was constrained to go by the minimum wages of Rs. 3045/- per month. Loss of future income due to permanent disability is, thus, recomputed as (Rs.3045/2x12x14) Rs.2,55,780/-.

7. The appeal also raised grievance about the inadequacy of compensation under the heads of loss of income, expenditure towards attendant charges, expenditure on account of conveyance & special diet and damages towards pain and sufferings. Given the nature of injuries suffered and the adverse effect the same having left in the aftermath, grievance of the appellant appears to be correct.

8. Going by the age of the claimant and the nature of injuries which included fracture of the hip bone it is inconvincible that he would have lost income for only two months. The evidence that the claimant had remained immobile, unable to move around, for a period of 12 months has remained unimpeached. Therefore loss of income is recalculated as (Rs.3045x12) Rs.36540/-.

9. The compensation on account of expenditure towards attendant charges, conveyance & special diet being on the lower side, also deserves to be increased to Rs.15,000/- each. Having regard to the nature of injuries and the permanent handicap they have left, the compensation towards pain and suffering is increased to Rs.1,00,000/-.

10. Adding the element of cost of treatment of Rs.25,000/- awarded by the Tribunal, the total compensation comes to (Rs.2,55,780 + 36,540 + 15,000 + 15,000 + 1,00,000 + 25,000) Rs.4,47,230/- rounded off to Rs.4,48,000/- (Rupees Four Lakhs Forty Eight thousand only). The award is enhanced accordingly. Needless to add, it shall carry interest as awarded by the Tribunal. The third respondent is directed to satisfy the enhanced amount by depositing requisite amount with the Tribunal within 30 days.

11. The appeal is disposed of in the above terms.

R.K.GAUBA, J.

OCTOBER 09 , 2017
mr