

\$~R-684

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

Decided on: 11th December, 2017

+ **MAC. APP. 1264/2012**

AMARJIT SINGH

..... Appellant

Through: Nemo.

versus

RAJU & ORS.

..... Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant had suffered injuries in a motor vehicular accident that had occurred on 18.12.2009, due to negligent driving of Indica car bearing registration No.DL-1YA-1408, by the first respondent. He instituted accident claim case (Petition No.270/10), on 15.04.2010, seeking compensation impleading the said person (driver) as party respondent in addition to second and third respondents, they being the owner and insurer respectively of the car. The tribunal held inquiry and, by judgment dated 28.08.2012, awarded compensation in the total sum of Rs.3,11,019/-, fastening the liability on the third respondent to pay with interest @ 7.5% per annum, calculating it thus:-

Sl.No.	Heads	Amount (in Rs.)
1.	Towards medical bills	12,160/-
2.	Towards loss of future income	2,22,000/-
3.	Towards loss of income during receiving treatment for one month	11,859/-
4.	Towards better diet	10,000/-
5.	Towards conveyance	10,000/-
6.	Towards attendant	10,000/-
7.	Towards pain and suffering	35,000/-
	Total	3,11,019/-

2. It may be added here, that in the assessment of the tribunal, the appellant (claimant) has suffered permanent functional disability to the extent of 24%.

3. The appeal at hand was filed seeking enhancement of the compensation. It was put in the list of '*Regulars*' as per order dated 22.02.2016, when it is called out for hearing on its own turn, there is no appearance on either side. The record has been perused.

4. It is noted that by evidence the claimant had proved that he had suffered grievous injuries in the right lower limb and hip region, the surgical procedure undergone resulting in iron rod and plate being planted. The consequent condition has rendered him permanently disabled, he having been evaluated by a board of doctors of Guru Teg Bahadur Hospital, which issued disability certificate (Ex.PW-1/4)

to the effect that his physical impairment is 48% in relation to right lower limb.

5. As per the pleadings submitted and the evidence led by the claimant, he was in private business of supply of spare parts earning Rs.400/- per day. The tribunal assessed the functional disability to the extent of 24%. It, however, noted that no clear evidence as to the income was mustered and, thus, went by the minimum wages to compute the loss of future income due to disability. The grievance in the appeal that his income should have been taken as Rs.10,000/- per month has not been substantiated by any evidence. In these circumstances, there is no case made out for increase in the award under the said head.

6. Given the nature of injuries and the extent of disability, the award under the head of pain and suffering at Rs.35,000/- appears to be on the lower side and is consequently increased to Rs.75,000/-. There being no award to such effect, amount of Rs.75,000/- is added towards loss of amenities of life. There is no case made out for improvement under the other heads of compensation.

7. Thus, the total award needs to be increased by (40,000/- + 75,000/-) Rs.1,15,000/-. It is increased to (3,11,019/- + 1,15,000/-) Rs.4,26,019/- rounded off to Rs.4,27,000/- (Rupees Four Lacs Twenty Seven Thousand Only).

8. Indeed, the rate of interest levied is on the lower side. Following the consistent view taken by this Court, the rate of interest

is increased to nine per cent (9%) per annum from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*].

9. The award is modified as above.

10. The insurer is directed to satisfy the enhanced award by requisite deposit with the tribunal within thirty days, making it available to be released to the claimant in terms of impugned award.

11. The appeal stands disposed of in above terms.

DECEMBER 11, 2017

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R.K.GAUBA, J.