

\$~R-686

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

Decided on: 11th December, 2017

+ MAC. APP. 1267/2012 and CM APPL.30666/2015

SHASHI

..... Appellant

Through: Nemo.

versus

BHUSHI KUMAR & ORS.

..... Respondents

Through: Mr. Arun Yadav, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant was the claimant before the motor accident claims tribunal in an accident claim case (Suit No.176/10) instituted by her on 24.04.2010, it having resulted in judgment dated 30.11.2011, whereby compensation in the total sum of Rs.2,69,500/- was awarded in her favour with interest @ 7.5% per annum, the liability having been fastened on the third respondent (insurer), it having admittedly issued the insurance policy covering third party risk in respect of the vehicle, the negligent driving of which was found to have given rise to the cause of action.

2. The tribunal awarded the compensation, calculating it thus:-

Sl.No.	Heads	Amount (in Rs.)
1.	Medicines and medical treatment	6,500/-
2.	Loss of earning capacity due to disability	1,20,000/-
3.	Loss of amenities of life	75,000/-
4.	Pain and suffering	50,000/-
5.	Conveyance	10,000/-
6.	Special Diet	8,000/-
	Total	2,69,500/-

3. It may be added here that the tribunal noted that the claimant had suffered injuries in his left upper limb which had rendered her permanently disabled, such physical impairment having been certified by Ex.PW-2/A by a board of doctors of G.T.B. hospital, Govt. of NCT of Delhi to be permanent and 90% in relation to the said part of the body. The tribunal took it to be a case of functional disability to the extent of 25% and granted the award accordingly.

4. The appeal at hand was filed by the claimant with the grievance that the compensation awarded is inadequate and, thus, seeking enhancement.

5. The appeal was put in the list of '*Regulars*' to come up on its own turn as per order dated 18.01.2016. When it is called out in its own turn, there is no appearance on behalf of the appellant (claimant).

6. The learned counsel for the insurer has been heard and with his assistance record perused.

7. It may be mentioned here that the appellant had moved an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 (CPC) seeking opportunity to lead additional evidence and recall of Dr. Puneet Mishra (PW-2) who had been examined earlier during the course of inquiry before the tribunal. This application was resisted by the insurance company and kept pending to be considered in the light of the above facts and circumstances of the case as per order dated 18.01.2016.

8. It is noted that the claimant was 46 years' old on the relevant date when she sustained injuries, the nature whereof is described in discharge summary (Mark 'A') of Lady Hardinge Medical College & Sucheta Kriplani Hospital, New Delhi where the treatment was undertaken, to be in the nature of open elbow dislocation with radial nerve palsy. The treatment administered included debridement and external fixations. Dr. Puneet Mishra (PW-2) one of the members of the medical board, during the course of his testimony, has stated that the disability suffered would be one-fourth in relation to the entire body. It is on that basis that the tribunal took it to be a case of functional disability to the extent of 25%. The medical officer having explained his assessment in the above manner, there would be no purpose served for he to be recalled for any further testimony. The request to that effect is, thus, declined.

9. There is no error or infirmity in the view taken by the tribunal on the extent of functional disability.

10. The award under various heads is found to be just and adequate. Therefore, the appeal and the pending application are dismissed.

R.K.GAUBA, J.

DECEMBER 11, 2017

vk

