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

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Date of Decision: 03rd January, 2017

+ **MAC.APP. 182/2016**

AMIT

..... Appellant

Through: **Mr S.N. Parashar, Adv.**

versus

SH. BALKAR SINGH & ORS

..... Respondents

Through: **Ms. Shantha Devi Raman,
Mr.Arihant Jain, Advs. for
Respondent No.3**

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of Rs. Rs.3,80,780/- has been awarded to the appellant. The appellant is seeking enhancement of the award amount.
2. On 21st March, 2012 at about 03:25 p.m., the appellant was going on his motorcycle on Bawana Road when he was hit by truck bearing No.HR-69A-0247 coming from the opposite direction which resulted in grievous injuries to appellant. The appellant was admitted in Satyavadi Raja Harish Chandra Hospital, Delhi from where he was shifted to St. Stephens Hospital where he remained admitted upto 03rd April, 2012. He was again hospitalised from 12th April, 2012 to 24th April, 2012. The appellant suffered grade IIIA fracture right shaft of the femur middle 1/3 and fracture left shaft of the femur with inter-condylar extension for which he underwent debridement of thigh bone

with lavage on 26th March, 2012 and left distal femur ORIF fusing distal femur plate and multiple screws on 17th April, 2012. The injuries suffered by the appellant resulted in 35% permanent disablement relating to both lower limbs.

3. The appellant was aged 20 years at the time of the accident and was running a coaching centre earning Rs.10,000/- per month. The Claims Tribunal awarded Rs.3,06,633/- towards loss of earning capacity, Rs.50,000/- towards pain and sufferings, Rs.30,000/- towards loss of amenities of life, Rs.1,73,000/- towards medical expenditure, Rs.35,000/- towards special diet, conveyance and attendant charges, Rs.40,000/- towards loss of income. The total compensation was computed as Rs.6,34,633/-.

4. The Claims Tribunal held the appellant to be guilty of contributory negligence to the tune of 40% and, therefore, the aforesaid compensation was reduced by 40% and Rs.3,80,780/- was awarded to the appellant.

5. Learned counsel for the appellant urged at the time of hearing that the appellant was not contributory negligent and, therefore, the deduction of 40% towards contributory negligence be set aside. It was further submitted that the functional disability be taken as 35% instead of 17.5% taken by the Claims Tribunal and the loss of earning capacity be computed by taking the income of Rs.10,000/- per month and adding 50% towards future prospects. The appellant seeks enhancement of compensation under the heads of pain and suffering, loss of amenities of life, conveyance, special diet, attendant as well as loss of income. The appellant also seeks compensation under the heads of loss of matrimonial prospects and disfiguration.

6. Learned counsel for the respondent No.3 submitted that the compensation awarded by the Claims Tribunal is just, fair and reasonable and does not warrant any enhancement.

7. This Court does not find any infirmity with respect to the finding of contributory negligence. Considering that the accident occurred in the middle of a single road, the finding of contributory negligence by the Claims Tribunal is upheld.

8. The appellant is present in Court and his condition has been seen. This Court is of the view that the compensation awarded under the heads of pain and suffering and loss of amenities of life is on a lower side and it warrants enhancement. The appellant is also entitled to compensation under the heads of disfigurement and loss of matrimonial prospects.

9. The compensation under the head of pain and suffering is enhanced from Rs.50,000/- to Rs.1 lakh. The compensation under the head of loss of amenities of life is enhanced from Rs.30,000/- to Rs.1 lakh. Rs.50,000/- is awarded under the head of loss of matrimonial prospects and Rs.46,430/- is awarded under the head of disfigurement. The compensation under the head of loss of earning capacity is enhanced from Rs.3,06,633/- to Rs.4,55,570/- by taking the functional disability as 26%, income of Rs.8,112/- and applying the multiplier of 18. Total compensation is computed as Rs.10 lakh (Rs.1,00,000/- for pain and suffering, Rs.1,00,000/- for loss of amenities, Rs.50,000/- for loss of matrimonial prospects, Rs.46,430/- for disfigurement, Rs.4,55,570/- for loss of earning capacity, Rs.17,300/- for medical expenditure, Rs.35,000/- towards special diet, conveyance and attendant charges, Rs.40,000/- towards loss of income). 40% is

deducted towards the contributory negligence of the appellant and after deducting the same, the appellant would be entitled to Rs.6 lakh.

10. The appeal is allowed and the award amount is enhanced from Rs.3,80,780/- to Rs.6,00,000/- along with interest @ 9% per annum from the date of filing of DAR. The enhanced award amount be deposited by respondent no.3 with UCO Bank, Delhi High Court branch by means of a cheque drawn in the name of UCO Bank A/c Amit within 30 days. Upon the aforesaid amount being deposited, UCO Bank shall release Rs.60,000/- to the appellant by transferring the same to his individual savings bank account. The balance amount be kept in five fixed deposits of equal amount for the periods of 1 year, 2 years, 3 years, 4 years and 5 years.

11. The monthly interest on the FDRs of the appellant shall be credited in the individual savings bank account of the appellant.

12. At the time of maturity, the fixed deposit amount shall be credited in the savings bank account of appellant.

13. All the original FDRs shall be retained by UCO Bank, Delhi High Court Branch. However, the photocopies of the same shall be provided to the claimant/appellant.

14. No cheque book or debit card be issued to the claimant/appellant without permission of this Court.

15. No loan or advance or pre-mature discharge shall be permitted without the permission of this Court.

16. The claimant/appellant shall approach the UCO Bank for completing the formalities for the disbursement of the award amount in terms of this order.

17. UCO Bank, Delhi High Court Branch shall ensure that the

savings bank account of appellant is individual account and not joint account.

18. Copy of this judgment be given *dasti* to counsels for the parties.

J.R. MIDHA, J.

JANUARY 03, 2017

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