

\$~R-721

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 11th January, 2018

+ MAC.APP. 47/2013

DINESH PRASAD SAH

..... Appellant

Through: Nemo.

versus

YOGESH KAUSHIK & ORS.

..... Respondents

Through: Mr. A.K. Soni, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant was the claimant before the motor accident claims tribunal in accident claim case (Suit No.413/2010) instituted on 17.11.2009 seeking compensation under Section 166 of the Motor Vehicles Act, 1988 for the injuries suffered by him in a motor vehicular accident that had occurred on 21.06.2009, due to negligent driving of Santro car bearing registration No.UP-13M-5958, admittedly insured against third party risk for the period in question with the second respondent (the insurer). The tribunal held inquiry by clubbing this case with another accident claim case, arising out of the same accident and, by common judgment dated 16.10.2012, awarded

compensation. It determined the compensation payable to the claimant in the sum of Rs.6,86,700/-, calculating it thus:-

Sl.No.	Head	Amount (in Rs.)
1.	Medical expenses	33,000/-
2.	Future Medical Expenses	2,00,000/-
3.	Pain and sufferings and enjoyment of life	30,000/-
4.	Special diet, attendant & conveyance	42,000/-
5.	Loss of income	39,200/-
6.	Future loss of income on account of disability	3,17,500/-
7.	Loss of amenities	25,000/-
	Total	6,86,700/-

2. The claimant feeling aggrieved by the above mentioned award of compensation, filed the present appeal seeking enhancement.

3. The appeal was put in the list of '*regulars*' as per order dated 18.02.2015. When it is called out for hearing, there is no appearance on behalf of the appellant. The learned counsel for the insurer has been heard and with his assistance record perused.

4. It is noted that the claimant had proved by evidence before the tribunal that he had sustained fracture of (L) metatarsals wedge of D11 and D12. This has rendered him permanently disabled, the impairment having been assessed in relation to spine and lower limb at 18%. The

tribunal took the functional disability at 15% and has calculated the loss of future income accordingly.

5. The prime grievance in the appeal is that the evidence of Hari Chandra (PW-4) Senior Executive of Rockland Hospital had brought home the fact that the claimant requires further surgical treatment and care, the procedure to be applied being ACL+ partial medial meniscectomy which actually meant the removal or repair of the C-shaped bands of cartilage in a joint. As per the evidence of PW-4, such surgical procedure would result in further medical expenditure in the sum of Rs.3,25,000/-, the medical documents referred in that context being Ex.PW-1/16. It is noted that the tribunal for no reasons has reduced the award towards future medical expenditure to Rs.2,00,000/-. This indeed was improper. The entire expenditure, as per the evidence of PW-4, should have been included in the award. Thus, the award needs to be increased by Rs.1,25,000/- on this account.

6. While this court does not find any merit in the grievance about the inadequacy of award under the heads of special diet, attendant charges or conveyance, the damages in the sum of Rs.30,000/- towards pain and suffering and enjoyment of life and Rs.25,000/- towards loss of amenities are found to be inadequate. The said awards are increased to Rs.1,00,000/- each. Thus, the compensation under these heads would need to be increased by Rs.70,000/- and Rs.75,000/- respectively. In the consequence, the total compensation is increased to (6,86,700/- + 1,25,000/- + 70,000/- + 75,000/-)

Rs.9,56,700/-, rounded off to Rs.9,57,000/- (Rupees Nine Lacs and Fifty Seven Thousand Only). Needless to add, the interim compensation will have to be adjusted and the award shall carry interest as levied by the tribunal.

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

8. The appeal is disposed of in above terms.

R.K.GAUBA, J.

JANUARY 11, 2018

vk