

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

Date of Decision: October 05, 2018

+ MAC.APP. 322/2013

PARADEEP KUMAR MITTAL Appellant

Through: Mr. O.P.Maini, Advocate

Versus

DINESH KUMAR & ORS. Respondents

Through: Mr. Pankaj Seth, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

(ORAL)

1. Impugned Award of 21st February, 2013 grants compensation of ₹1,42,297/- with interest @ 7.5 % *per annum* to appellant- *Pradeep Kumar Mittal (hereinafter referred to as 'Injured')*, aged 32 years, who was engaged in the business of Tent and Decorators, had suffered grievous injuries in a vehicular accident, which took place on 8th February, 2010. The facts, as noticed in the impugned Award, are as under:-

“Brief facts arising out of this case are that on 08.02.2010 at about 11 p.m. petitioner/injured was going towards his residence on his motorcycle bearing no.DL-7SX-8955 and when he reached at Vikas Marg, Preet Vihar, Red Light Point, PS Preet Vihar, Delhi in the meantime a car make Tavra bearing no. UP-14AT-1670 which was being

driven by R-1 in a rash and negligent manner reached there and hit the petitioner, due to which he fell down and received grievous injuries. He was immediately taken to LBS hospital. He remained admitted there from 8.2.10 to 11.2.10.”

2. To render the impugned Award, learned Motor Accident Claims Tribunal (*henceforth referred to as “the Tribunal”*) has relied upon evidence of Injured- *Pradeep Kumar Mittal* and other evidence on record. The Tribunal has noted in the impugned Award that Injured- *Pradeep Kumar Mittal* had suffered 9% permanent disability in relation to right lower limb and has assessed the functional disability to be 5%. The Tribunal has assessed the income of Injured-*Pradeep Kumar Mittal* on minimum wages payable to an unskilled worker and multiplier of 16 has been applied and after making addition of 30% towards “*future prospects*”, future loss of income of Injured- *Pradeep Kumar Mittal* has been assessed at ₹65,865/-. The breakup of compensation awarded by the Tribunal to the Injured is as under:-

1.	Towards medical expenses	₹5,598/-
2.	Towards three months salary	₹15,834/-
3.	Towards future loss of income	₹65,865/-
4.	Towards better diet	₹10,000/-
5.	Towards conveyance	₹10,000/-
6.	Towards attendant	₹10,000/-
7.	Towards pain and suffering	₹25,000/-
	Total	₹1,42,297/-

3. In this appeal, enhancement in the quantum of compensation awarded by the Tribunal is sought by Injured- *Pradeep Kumar Mittal* on

the ground that the compensation granted is inadequate. It is submitted by counsel for Injured- *Pradeep Kumar Mittal* that the Tribunal has erred in assessing income of Injured-*Pradeep Kumar Mittal* on minimum wages payable to an unskilled worker, whereas minimum wages payable to a skilled worker on the day of accident ought to have been considered while assessing the “*loss of earning capacity*”. It is next submitted that compensation under the head “*loss of amenities of life*” ought to be granted and the Tribunal has erred in not granting it and that the compensation granted under the “*non-pecuniary heads*” is inadequate and it be suitably enhanced. Lastly, it is submitted that finding of contributory negligence returned by the Tribunal and of putting liability of 30% upon Injured is unjustified and it needs to be set aside.

4. On the contrary, learned counsel for Insurer supports the impugned Award and submits that the compensation awarded is just and fair and this appeal deserves dismissal.

5. Upon hearing and on perusal of impugned Award and the evidence on record, I find that a Tent Decorator cannot be considered as an unskilled workman and so, minimum wages payable to a skilled worker ought to be applied while assessing his “*loss of earning capacity*”. On the day of accident, minimum wages payable to a skilled worker were ₹6,448/- per month. While taking the income of Injured ₹6,448/- per month, compensation under the “*loss of income*” is re-assessed as under:-

$$\text{₹6,448/-} \times 3 = \text{₹19,344/-}$$

6. In view of Supreme Court’s Three Judge Bench decision in *Jagdish v. Mohan and Others*, (2018) 4 SCC 571, addition of 40% towards “*future prospects*” has to be made. The Tribunal has rightly

assessed the “*functional disability*” of Injured at 5% and has also rightly applied multiplier of 16. Accordingly, the “*loss of earning capacity*” of Injured is re-assessed as under:-

$$₹6,448/- \times 12 \times 140/100 \times 5/100 \times 16 = ₹86,661.12/-$$

(rounded off to ₹86,662/-)

7. So far as compensation granted under the ‘*non-pecuniary heads*’ is concerned, I find that inadequate compensation under these heads has been granted by the Tribunal. In the facts and circumstances of this case, compensation granted under the head “*pain and suffering*” is increased from ₹25,000/- to ₹40,000/-. The “*conveyance*” and “*attendant*” charges are also increased from ₹10,000/- to ₹20,000/- each. The Tribunal has erred in not granting compensation under the head “*loss of amenities of life*”. Injured- *Pradeep Kumar Mittal* is granted compensation of ₹20,000/- under head “*loss of amenities of life*”. Compensation awarded under the other heads is found to be just and reasonable.

8. Consequently, the compensation payable to Injured-*Pradeep Kumar Mittal* is re-assessed as under:-

1.	Medical expenses	₹5,598/-
2.	Loss of income	₹19,344/-
3.	Loss of earning capacity	₹86,662/-
4.	Diet	₹10,000/-
5.	Conveyance	₹20,000/-
6.	Attendant charges	₹20,000/-
7.	Pain and suffering	₹40,000/-
8.	Loss of amenities of life	₹20,000/-
	Total	₹2,21,604/-

9. On the aspect of contributory negligence, the Tribunal has assessed

30% contributory negligence of Injured, as he was driving the motorcycle under the influence of liquor and without valid driving license. A Three Judge Bench of Supreme Court in *Dinesh Kumar Vs. National Insurance Company Limited* (2018) 1 SCC 750 has reiterated that even if a driver is driving without license, it would not justify attribution of contributory negligence to him, because it has to be seen as to whether the accident had occurred for any fault of the said driver. In the instant case, I do not find that the accident in question had taken place due to negligence of Injured-*Pradeep Kumar Mittal* because of his being under the influence of liquor or because he was driving the motor cycle without holding driving license. Therefore, the Tribunal was not justified in attributing 30% contributory negligence to the Injured.

10. In view of aforesaid, impugned Award is modified to the extent that the entire modified compensation shall be payable by the Insurer and no apportionment is to be made, as I find that there was no contributory negligence on the part of Injured-*Pradeep Kumar Mittal* in causing this accident.

11. Consequentially, the compensation awarded by the Tribunal to Injured-*Pradeep Kumar Mittal* stands enhanced from ₹1,42,297/- to ₹2,21,604/-. In view of Supreme Court's Three Judge Bench decision in *Jagdish (Supra)*, the modified compensation shall carry interest @ 9% *per annum*. Six weeks' time is granted to Insurer to deposit the modified compensation with the Tribunal concerned and it be disbursed forthwith to Injured in the manner already indicated in the impugned Award.

12. While modifying the impugned Award in aforesaid terms, the

above captioned appeal is accordingly disposed of.

(SUNIL GAUR)
JUDGE

OCTOBER 05, 2018

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