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

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Decided on: 14.11.2019

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MAC.APP. 165/2014

PRADIP KUMAR RAY

..... Appellant

Through: Mr. Ghansham Mishra, Mr. Rajesh
Mishra and Mr. Bijay Kumar,
Advocates

versus

SH ABHAY RAJ YADAV & ORS

..... Respondents

Through: Mr. Pankaj Seth, Advocate for R-3

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. The matter was passed over twice since morning.
2. None appears for the insurance company.
3. The appellant impugns the award of compensation dated 31.10.2013 passed by the learned MACT in MACP No. 134/12 on the ground that it has erred in considering/assessing the functional disability of the appellant/injured only as 40%, whereas the same ought to have been considered as 86%
4. According to the Disability Certificate, the injured has been handicapped to the extent of 86% in his right hand.

5. At the time of the motor accident, the claimant was 48 years of age. He has been practicing as a legal practitioner for the past two decades and claimed to have a fair degree of practice.

6. The monthly income of the injured was assessed @ Rs. 16,980/- on which addition of 30% towards 'loss of future prospects' was granted.

7. The learned counsel for the appellant/injured submits that the appellant is unable to do anything with his right hand without the aid of another person and without taking assistance of the other hand. He further submits that the injured faces difficulty in putting on his clothes or otherwise to attend to his needs. His use of computers and other electronic devices, necessary in this technology driven age for legal research, immediate communication with clients and for work related issues, etc., has been severely curtailed. He is unable to greet and shake hands with anyone with his right hand. He is unable to efficiently turn over the pages of the case files with the injured hand. The movement of his hand is minimum and therefore, adequate 'just compensation' ought to be awarded by this Court, insofar as the entire right hand has become virtually dysfunctional. However, keeping in mind, that the other hand is fully functional and as well as lower limb and the whole body is unaffected, therefore, the functional disability is enhanced to 70%.

8. Since the appellant was 48 years of age at the time of the motor accident, compensation towards 'loss of future prospects' shall be payable @ 25% in terms of the dicta of the Supreme Court in ***National Insurance Co. Ltd. v. Pranay Sethi & Ors*** (2017) 16 SCC 680, and not @ 30% as computed by the learned Tribunal. The same is modified to that extent.

9. The appellant also seeks enhancement of compensation granted by the learned Tribunal towards 'loss of amenities and enjoyments', insofar as he will be deprived and constrained from enjoying such amenities of life by totally being dysfunctional apropos his right hand, which will also affect his professional and social interaction.

10. The learned counsel submits that he is unable to carry out everyday functions of a non-handicapped person and this would immediately affect his interaction with any prospective clients.

11. In the circumstances, keeping in view the nature and extent of the injury, its social and psychological impact on the injured, the compensation for the aforesaid non pecuniary Head is enhanced from Rs.1,00,000/- to Rs.4,00,000/-.

12. The claimant being a lawyer by profession would ordinarily need to carry his files, case diary or his laptop when rushing from one Court to another. Now, that his right hand has become dysfunctional he would require an attendant at all times. It is argued that the compensation awarded by the learned Tribunal towards 'attendant charges' @ Rs. 2,000/- per month for 3 months is on the lesser side. The same is inadequate and ought to be awarded for lifetime. Keeping in view the nature of the injury and the disability of the injured, the compensation towards 'attendant charges' is enhanced to a lumpsum of Rs. 3,00,000/- for lifetime.

13. Accordingly, the enhanced amount payable to the appellant/injured is as under:

S.No.	Particulars	Amount
1.	Loss of future earnings [Rs. 16,980/- (monthly income of the injured) x 12 (months) x 13 (multiplier) x 125/100 (loss of future prospects) x 70/100 (70% functional disability)]	Rs. 23,17,770/-
2.	Loss of amenities and enjoyments	Rs. 4,00,000/-
3.	Attendant charges	Rs. 3,00,000/-
	TOTAL	Rs. 30,17,770/-

14. Let the enhanced amount of Rs. 30,17,770/- alongwith interest @9% per annum from the date of filing of the claim petition till its realization be deposited before the learned Tribunal to be released to the beneficiary(ies) of the award in terms of the scheme of disbursement specified therein.

15. The learned counsel for the appellant/injured submits that since the appellant is in need of some monies. In the circumstance, let 50% of the balance amount alongwith interest accrued thereon, be released to the appellant within three weeks from the date of receipt of copy of this order.

16. The appeal is disposed-off in the above terms.

NAJMI WAZIRI, J

NOVEMBER 14, 2019
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