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

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Decided on: 06.11.2019

+ MAC.APP. 862/2019, CM APPL. 48203/2019 & CM APPL. 48205/2019

BILAL AHMAD @ BILAL HUSSAIN

..... Appellant

Through: Ms. Pooja Goel, Advocate.

versus

RAM DAYAL & ORS (SHRIRAM GENERAL INSURANCE CO LTD)

..... Respondents

Through: Mr. Abhay Singh Bhadoria, Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

CM APPL. 48204/2019 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed-off.

CM APPL. 48205/2019 (for delay in re-filing)

3. For the reasons mentioned in the application, it is allowed.
4. The delay in re-filing of the appeal is condoned.
5. The application stands disposed-off.

CM APPL. 48203/2019 (for delay)

6. For the reasons mentioned in the application, it is allowed.

7. The delay in filing the appeal is condoned.

8. The application stands disposed-off.

MAC.APP. 862/2019

9. Issue notice.

10. The learned counsel named above accepts notice on behalf of the insurance company.

11. At joint request, the appeal is taken up for disposal.

12. This appeal seeks enhancement of the award of compensation dated 11.10.2018 passed by the learned MACT in DAR No. 621/16. Admittedly, the appellant has suffered: i) fracture of left femur shaft, ii) fracture of the 1st, 2nd and 5th metatarsal shaft and iii) amputation of his left little toe. Enhancement is also sought of the compensation awarded under various heads including 'pain and sufferings', 'loss of income for 3 months', 'special diet and conveyance' and 'loss of gait/disfigurement'. He has been awarded Rs. 50,000/-, Rs.35,050/-, Rs. 10,000/- and Rs. 25,000/- under each head granted, respectively. It is the appellant's case that compensation under aforesaid heads is on the lesser side.

15. The Court is of the view that the appellant would be restricted from walking long distances and running freely with the same force as he would without amputation of the little toe. In the circumstances, the quantum of compensation towards 'loss of gait/disfigurement' is enhanced to Rs. 50,000/-.

16. The compensation towards 'loss of income for 3 months' is challenged on the ground that recovery of the nature of the injury sustained

by the appellant would ordinarily take more than three months to recuperate from.

17. This Court in **Suresh Saini vs. Manjeet Singh & Ors.** in MAC APP. 588/2017 decided on 18.10.2019 held as under:-

“4.... that the appellant, having suffered a fracture in the fifth metatarsal bone of his left foot, was incapacitated for a period of more than three months, and should be duly compensated, as his business has suffered due to this incapacitation. The appellant had filed ITRs of three years showing gross total income of Rs. 8,74,917/- per annum.

5. The said fracture is not in dispute inasmuch as the learned Tribunal has noted that the appellant had suffered it. It is understandable that a person who suffers such an injury in the web of the feet, would necessarily be in some degree of constant pain, discomfort and inconvenience, since the entire weight of the body rests upon the feet. Obviously such injured part of the body would take a longer time to heal. The claimant-appellant is stated to be 40 years of age, therefore, the injury would take him longer to recuperate from than, if he was younger.....”

18. In the aforesaid case, the compensation apropos injury to only one bone i.e. his fifth metatarsal bone was assessed; whereas in the present case the appellant has suffered fracture of: i) the left femur shaft, ii) fracture of the 1st, 2nd and 5th metatarsal shaft alongwith (iii) amputation of his left little toe. This nature of injury would take not less than six months to enable the injured to partially recover and resume his normal course of work.

19. In the circumstances, compensation towards ‘loss of income’ which was earlier awarded for three months is enhanced to six months i.e. Rs. 34,866/- is enhanced to Rs. 69,732/-.

20. The Court would note that Dr. Hemant Sharma-PW-3, Specialist (Ortho), Dr. Hedgewar Arogya Sansthan, Karkardooma, Delhi had deposed that the amputation of the 5th toe of left foot would be a constraint upon the injured in walking long distances. The Court is of the view that he needs to be duly compensated apropos 'loss of future income'. In the circumstance, looking at the nature of the injury, functional disability apropos whole body is fixed at 7%.

21. Since the 'pain and suffering' would continue for atleast six months, the compensation towards 'pain and suffering' is enhanced to Rs. 1 lac.

22. Furthermore, since conveyance would be an essential component in the present case, for the appellant being injured and incapacitated, as noted above, the compensation towards 'special diet and conveyance' is enhanced to Rs. 30,000/-.

23. The Court would note that the appellant was barely 23 years old and in the prime of his life, at the time of the motor-vehicular accident. His marriage prospects would be affected on account of the grievous injuries sustained by him. In the circumstance, the appellant would be entitled to compensation towards 'loss of marriage prospects' and the same is granted to him @ Rs. 1 lac.

25. The total amount payable to the appellant/claimant is as under:

S.No.	Particulars	Amount
1.	Loss of gait/disfigurement	Rs.50,000/-
2.	Loss of income for 6 months [Rs. 11,622/- (minimum wages) x 6]	Rs. 69,732/-

	(months)]	
3.	Loss of future income [Rs. 11,622/- (minimum wage) x 12 (months) x 7/100 (7% functional disability)x 18(multiplier)]	Rs. 1,75,725/-
4.	Pain and suffering	Rs. 1,00,000/-
5.	Special diet and conveyance	Rs. 30,000/-
6.	Loss of marriage prospects	Rs. 1,00,000/-
7.	Medical expenses	Rs. 35,000/-
TOTAL		Rs. 5,60,457/-

26. Let the aforesaid amount alongwith interest @ 9% from the date of filing of the DAR till its realisation, be deposited before the learned Tribunal, within three weeks from date of receipt of copy of this order, to be released to the beneficiary of the Award in terms of the scheme of disbursement specified therein.

27. The appeal stands disposed-off in the above terms.

नात्यमेव जयते

NAJMI WAZIRI, J

NOVEMBER 06, 2019/RW