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

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Date of Decision: 31st July, 2019

+ MAC.APP. 413/2018

RAKESH SIGNH

..... Appellant

Through: Mr. Kamaldeep, Advocate.

versus

DHEERAJ & ORS

(NEW INDIA ASSURANCE CO LTD)

..... Respondents

Through: Mr. Sanjay Kumar Dubey and Ms. Shuchi Singh, Advocates for R3.
Mr. Pankaj Gupta, Advocate as amicus curiae.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T (O R A L)

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of Rs.22,14,000/- has been awarded to him. The appellant is seeking enhancement of the award amount.

2. On 02nd July, 2017 at about 11:40 A.M., the appellant was returning home after finishing his work when he was hit by vehicle No. UP 77N 8517 near Thakur Hotel, Delhi Darbar Road, Bhajanpura, Delhi. The accident resulted in grievous injuries and his left arm was crushed. The appellant was taken to GTB Hospital where his left arm was amputated due to the injuries suffered. The permanent disability of the appellant was assessed by the Medical Board as 87% relating to left upper limb.

3. The Claims Tribunal awarded compensation of Rs.22,13,827/- as per break up given hereunder:-

(i) Pain and suffering

Rs.1,00,000/-

(ii)	Loss of amenities and enjoyment of life	Rs.1,00,000/-
(iii)	Servant/attendant charges	Rs.25,000/-
(iv)	Conveyance and special diet	Rs.25,000/-
(v)	Loss of wages	Rs.80,100/-
(vi)	Future loss of income	Rs.15,37,920/-
(vii)	Cost of artificial limb	Rs.3,45,807/-
Total		<u>Rs.22,13,827/-</u>

4. Learned counsel for the appellant urged following grounds at the time of hearing:-

- (i) The Claims Tribunal has not awarded any compensation for medical expenditure. The appellant claims for Rs.50,000/- towards medical expenditure. It is submitted that the medical bills for the said amount have been lost by the appellant.
- (ii) The compensation for expenditure of conveyance and special diet be enhanced from Rs.25,000/- to Rs.50,000/-
- (iii) The expenditure for cost of attendant be enhanced from Rs.25,000/- to Rs.50,000/-.
- (iv) The Claims Tribunal has awarded loss of earning for six months by taking minimum wages of Rs.13,350/- in respect of unskilled person whereas the appellant is a skilled mason and, he remained under treatment for eight months and, therefore, the loss of earning be awarded for eight months by taking minimum wages Rs.16,182/- in respect of a skilled person.
- (v) The Claims Tribunal has awarded Rs.3,45,807/- towards artificial limb which has a life of five years and, therefore, the appellant may require replacement every five years. Alternatively, it is submitted that the compensation be awarded for repairs and maintenance of the artificial limb.

(vi) The Claims Tribunal has not awarded any compensation towards disfiguration. The appellant claims Rs.1,00,000/- towards disfiguration.

(vii) The Claims Tribunal has taken loss of earning capacity as 60%. It is submitted that the loss of earning capacity be taken as 87% as the appellant is unable to do any work due to the amputation of left arm. The minimum wages of Rs.16,182/- per month in respect of skilled person be taken into consideration for computation of loss of earning capacity and the future prospects of 40% added for computation of the compensation.

5. Vide order dated 31th July, 2018, this Court directed the Committee appointed by this Court in MAC.APP.1134/2017 to examine the appellant and advise about the life and cost of lifetime warranty of artificial arm taken by the appellant. Mr. Pankaj Gupta, learned *amicus curiae* in MAC.APP.1134/2017 has submitted the report of the Committee which is taken on record. As per the report of the Committee, the artificial limb would require repair/maintenance of Rs.40,000/- after five years.

6. In the present case, the appellant has suffered amputation of left arm which has resulted in 87% permanent disability. The Claims Tribunal has not awarded any compensation towards disfiguration. The appellant claims for Rs.1,00,000/- towards disfiguration which is fair and reasonable. The appellant is awarded Rs.1,00,000/- towards disfiguration.

7. The Claims Tribunal has awarded pecuniary compensation of Rs.50,000/- (Rs.25,000/- towards attendant charges and Rs.25,000/- towards conveyance and special diet) which is on a lower side. The compensation of attendant charges is enhanced from Rs.25,000/- to Rs.50,000/-, and compensation for conveyance and special diet is enhanced from Rs.25,000/- to Rs.50,000/-. The appellant is awarded Rs.50,000/- under the head of medical expenditure.

8. The Claims Tribunal has awarded Rs.3,45,807/- towards cost of the artificial limb and the appellant would require expenditure of repair and maintenance. Accepting the report of the Committee, Rs.40,000/- is awarded towards expenditure on repair and maintenance.

9. The Claims Tribunal has awarded Rs.80,100/- towards loss of wages for six months and Rs.15,70,920/- towards loss of earning capacity by taking the minimum wages of Rs.13,350/- of an unskilled person. The appellant claims to be a skilled mason which has not been accepted by the Claims Tribunal. The minimum wages of Rs.13,350/- taken by the Claims Tribunal are accepted. The appellant was aged 35 years and 40% is added towards his future prospects. Taking the minimum wages of 13,350/- adding 40% towards future prospects and applying the multiplier of 16 the loss of earning capacity is computed as Rs.21,53,088/-. The Claims Tribunal has taken the functional disability as 60% which is fair and reasonable and does not warrants any interference.

10. The appellant is entitled to total compensation of Rs.30,69,000/- (Rs.30,68,995/- rounded off) as per break up given hereunder:-

(i)	Pain and suffering	Rs.1,00,000/-
(ii)	Loss of amenities of life	Rs.1,00,000/-
(iii)	Compensation for disfiguration	Rs.1,00,000/-
(iv)	Servant/attendant charges	Rs.50,000/-
(v)	Expenditure on treatment	Rs.50,000/-
(vi)	Conveyance and special diet	Rs.50,000/-
(vii)	Loss of wages	Rs.80,100/-
(viii)	Future loss of income	Rs.21,53,088/-
(ix)	Cost of artificial limb	Rs.3,45,807/-
(x)	Expenditure on repair and maintenance of artificial limb	Rs.40,000/-

Total	<u>Rs.30,68,995/-</u>
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11. The appeal is allowed and the compensation award is enhanced from Rs.22,13,827/- to Rs.30,69,000/-. The appellant is not entitled to the interest on Rs.40,000/- towards expenditure on repair and maintenance. Interest @ 9% per annum is awarded on the balance amount of Rs.30,29,000/- from the date of institution of the claim petition i.e. 22nd August, 2017.

12. Respondent No.3 is directed to deposit the enhanced compensation amount with the Registrar General of this Court within four weeks.

13. List for disbursement of the compensation amount on 06th September, 2019.

14. The appellant shall remain present in Court on the next date of hearing along with the passbooks of his savings bank accounts near the place of his residence in a nationalised bank along with PAN card and Aadhaar card. The concerned bank is directed not to issue any cheque book and/or debit card to the appellant and if the same has already been issued, the concerned bank is directed to cancel the same and make an endorsement on the passbook that no cheque book or debit card shall be issued to the appellant without the permission of this Court. The appellant shall produce the copy of this order before the concerned bank whereupon the bank shall make an endorsement on the passbook. The appellant shall produce the original passbook with the necessary endorsement on the next date of hearing.

15. Copy of this judgment be given *dasti* to counsel for the parties under the signature of the Court Master.

J.R. MIDHA, J.

JULY 31, 2019/ak