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

% *Decided on: 26.07.2019*

+ **MAC.APP. 1027/2013 & CM APPL. 43633/2018**

RAJ KUMAR THAPA

..... Appellant

Through: Mr. Rajan Kumar Singh, Advocate.

versus

AMIT ARORA & ORS

..... Respondents

Through: Mr. Nikhil Tripathi, Proxy Counsel
for Mr. Amit Kumar Pandey,
Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The appellant has impugned the order of compensation on the ground that it is on the lesser side and that it needs modification because certain aspects were not on record before the learned MACT at the time of adjudication of the claim petition. The appellant had filed a claim petition for damages resulting from a motor-accident. An amount of Rs. 2,46,400/- has been awarded to him apropos the injuries sustained by him. Primarily, the components of the compensation amount are i) "medical expenses", ii) "special diet and conveyance", iii) "loss of income" for a period of ten months and iv) "pain and suffering".

2. It is the appellant's case that the nature of his injuries were such that it required repeated treatment and he underwent further surgery, for which he

incurred expenses of Rs. 89,000/-. In this regard, he has produced Discharge Slips issued by H Ortho Junction Hospital, New Delhi and Cash Memos dated 19th, 20th, 25th and 28th May, 2014 marked as Exhibit AW2/1 to AW2/4. The same have been proven by the Technician-cum-Accountant of the aforesaid hospital. Nothing adverse has come on record in the cross-examination apropos the said documents. Therefore, the amount expended i.e. Rs. 89,000/-, arising as a result of further treatment is proven.

3. The learned counsel for the appellant submits that the appellant has already been certified as disabled. He relies upon the Disability Certificate dated 27.09.2013. He submits no compensation has been granted apropos the permanent disability suffered by the appellant in his right lower limb, which has rendered him 100% functionally disabled. He was a driver by vocation and he has not been issued a driving licence because of his inability to use his foot, which has been permanently damaged at the ankle i.e. he would be unable to use his right foot to press or operate the brakes or accelerator of a motor vehicle ever. The appellant also seeks compensation for “loss of future prospects” in terms of the dicta of the Supreme Court in ***Parminder Singh vs. New India Assurance Co. Ltd. & Ors.*** in Civil Appeal No. 5123/2019 dated 01.07.2019, which held *inter alia* that for permanent disability, loss of future prospects would be awarded @50%.

4. The appellant’s loss of income was computed on the basis of his salary i.e. @Rs. 9,000/- per month. In support of his claim that he was earning Rs. 9,000/- and other perks, he has produced Salary Certificate issued by M/s Yash Trading Company-his employer (Exhibit PW1/3). However, no witness from the employer was examined, but the learned

Tribunal, keeping in consideration that about Rs. 9,000/- was the prescribed minimum wage for a skilled worker (driver) and similar to the appellant's claim of monthly earning on the date of the accident, the same was taken to be his income and thereafter compensation was granted to him on the ground that he was unable to work for ten months. However, now in terms of the Disability Certificate, the appellant would never be able to work as a driver, therefore, his functional disability would be taken as 100%.

5. The appellant was 26 years old at the time of the accident, therefore, a multiplier of 17 would be applicable. In computing the loss of earning of the appellant to his monthly loss of Rs. 9,000/- an additional 50% towards "loss of future prospects" alongwith interest @9% from 27.09.2013 i.e. date of the Disability Certificate would be payable, alongwith Rs. 89,000/- (reimbursement of medical expenses) and similar rate of interest thereon w.e.f. 28.05.2014.

6. Let the aforesaid compensation be computed afresh by the insurance company and be paid to the appellant within four weeks from the date of receipt of this order.

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

NAJMI WAZIRI, J.

JULY 26, 2019

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