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

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Date of Decision: 18th January, 2019

+ MAC.APP. 61/2018

SHYAM BABU

..... Appellant

Through Mr.Amit Kumar Pandey, Advocate

versus

RAJENDER GIRI & ORS(BAJAJ ALLIANZ
GENERAL INSURANCE COMPANY)

..... Respondent

Through Mr.Sumit Kumar Vats, Mr.Ankit
Chaturvedi, Advocates

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

CM 1673/2018 (delay)

1. The delay in filing the appeal is condoned. The application is disposed of.

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2. The appellant has challenged the award of the Claims Tribunal whereby compensation of Rs.4,37,385/- has been awarded to the appellant. The appellant seeks enhancement of the award amount.

3. The accident dated 27th November, 2014 resulted in grievous injuries to the appellant. The appellant suffered fracture of left bicolunar acetabular and was operated on 13th December, 2014 for open reduction plus internal fixation of both anterior and posterior column with recon plate (zimmer) for which he was admitted in hospital from 27th November, 2014

to 19th December, 2014. The injuries suffered by the appellant resulted in 29% permanent disability in relation to his left lower limb.

4. The Claims Tribunal awarded Rs.60,000/- for medical expenses, Rs.15,000/- for attendant charges, special diet and conveyance, Rs.27,144/- for loss of income during treatment, Rs.40,000/- for pain and suffering, Rs.10,000/- for loss of amenities and enjoyment of life, Rs.10,000/- for disfiguration, Rs.2,75,241/- for loss of future earning capacity/future income. The total compensation awarded by the Claims Tribunal is Rs.4,37,385/-.

5. Learned counsel for the appellant urged at the time of the hearing that the functional disability of 15% taken by the Claims Tribunal is on the lower side. It is submitted that the appellant was a vegetable seller but is unable to continue his occupation as he is unable to pick up any weight. It is submitted that the functional disability be taken as 29%. It is further submitted that the non-pecuniary compensation is on a lower side and be enhanced. The appellant seeks enhancement of the compensation of pain and suffering from Rs.40,000/- to Rs.1,00,000/-, compensation of loss of amenities of life from Rs.10,000/- to Rs.1,00,000/- and compensation for disfiguration from Rs.10,000/- to Rs.50,000/-. The appellant seeks enhancement of the loss of earning capacity from Rs.2,75,241/- to Rs.4,09,344/-.

6. The appellant is present in Court and his condition has been seen. The appellant was a vegetable seller and he submits that he is unable to continue his occupation due to the permanent disability as he is unable to pick up any weight. The Claims Tribunal has taken the functional disability of the appellant as 15% which is on a lower side. Considering the condition of the

appellant, the functional disability of the appellant is enhanced from 15% to 25%. Taking the income of the appellant as Rs.9,048/- per month, adding 30% towards future prospects, applying the multiplier of 13 according to the age of the appellant and taking the functional disability as 25%, the loss of earning capacity is computed as Rs. 4,58,733.6. The compensation awarded by the Claims Tribunal under the heads of pain and suffering, loss of amenities of life and disfiguration, are on lower side. The compensation for pain and suffering is enhanced from Rs.40,000/- to Rs.60,000/-, compensation for loss of amenities and enjoyment of life is enhanced from Rs.10,000/- to Rs.50,000/- and compensation for disfiguration is enhanced from Rs.10,000/- to Rs.40,000/-. The compensation awarded under the other heads is fair and reasonable. The appellant is entitled to total compensation of Rs.7,10,877.6, rounded off to Rs.7,11,000/-.

7. The appeal is allowed and the compensation amount is enhanced from Rs.4,37,385/- to Rs.7,11,000/- along with interest @ 9% per annum from the date of the institution of the claim petition i.e. 26th March, 2015.

8. Respondent No.3 is directed to deposit the enhanced award amount with the Registrar General of this Court within six weeks.

9. The appellant shall remain present in Court on the next date of hearing along with original passbook of his savings bank accounts near the place of his residence as well as 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 and/or debit card shall be issued to appellant without the permission of this Court. The concerned bank of the appellant shall permit the appellant to

withdraw money from his savings bank account by means of a withdrawal form. The appellant shall produce the copy of this order before the concerned bank whereupon the bank shall make an endorsement on the passbook of the appellant. The appellant shall produce the original passbook of his savings bank account with the necessary endorsement on the next date of hearing.

10. List for disbursement of the compensation amount on 29th March, 2019.

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

JANUARY 18, 2019/dk

J.R. MIDHA, J.

भारतमेव जयते