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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 12.05.2023
Pronounced on: 13.07.2023

+ MAC.APP. 103/2013

SHIV KALI @ BHARTI

..... Appellant

Through: Mr. Ashok Kumar Jha, Advocate.

versus

SHYAM NARAYAN YADAV & ORS.

..... Respondents

Through: Mr. J. P. N. Shahi, Advocate for R-3.

CORAM:**HON'BLE MR. JUSTICE GAURANG KANTH****J U D G M E N T****GAURANG KANTH, J.**

1. Present appeal has been preferred by the Appellant/claimant to seek modification of the compensation awarded by the learned Motor Accidents Claims Tribunal, South District, Saket Courts, New Delhi (hereinafter referred to as "*Claims Tribunal*") vide the Award dated 03.10.2012 ("*impugned Award*") in Claim Petition No. 691/10 titled as *Shiv Kali @ Bharti v. Shyam Narayan Yadav & Anr.*
2. Vide the Impugned Award, the Appellant was awarded an amount of Rs.5,24,000/- as compensation towards the injuries sustained by her in an accident, with an interest @ 9% per annum against claimed

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compensation of Rs.10,00,000/-, from the date of filing of the suit till the payment is made by respondent No.3/Insurance Company – The Oriental Insurance Co. Ltd., with accrued interest thereon.

FACTS RELEVANT FOR ADJUDICATION OF THE APPEAL

3. Facts of the matter as recorded by learned Claims Tribunal in the impugned Award are as follow:

“2. Briefly, the facts as stated in the petition are that on 18.09.06 at about 3.30 AM, the petitioner alongwith family and 15 workers who were employed with Gurubax Company was coming from Bidholi, Dehradun to Saket, New Delhi on a light goods vehicle bearing no. DL-1LE-6568. When she reached Khirki, Saket near Press Enclave Road and was unloading her household articles which she had brought from Dehradun, all of a sudden, the respondent no. 1 drove the vehicle. As a result thereof, the petitioner fell down and sustained injuries. She was taken to AIIMS where her MLC was prepared. A case was registered vide FIR No. 1098/06 at Police Station Malviya Nagar. She was 37 years of age. She was beldar. She used to earn Rs. 5,000/- per month. It was stated that respondent no. 2 was owner of the offending vehicle and it was insured with respondent no. 3.”

4. Appellant/claimant filed the claim petition before the learned Claims Tribunal under Section 166 & 140 of the Motor Vehicles Act, 1988 (*“the Act”*) for claiming compensation of Rs. 10,00,000/- towards the injuries sustained by her during the accident involving vehicle being driven by Respondent no. 1 at the time of accident.
5. Respondents in order to counter the claims made by the Appellant, filed their respective Written Statements wherein it was stated that the accident and consequent injuries to the Appellant were caused due to negligence of her own. Respondent no. 3, the Insurance Company also filed its Written Statement wherein it denied the liability to compensate



the Appellant/claimant, however, it was admitted that the Respondent no.2 i.e., the owner of the vehicle was insured with it *vide* policy no. 271600/31/2007/863 which had its validity period from 30.07.2006 to 29.07.2007. It was further stated by Respondent no. 3 that the driver of the said vehicle (Respondent no.1) was driving the vehicle without a valid driving license at the time of the accident.

6. Based on the pleadings of the parties, learned Claims Tribunal framed the following issues for the adjudication:

*“1. Whether the petitioner sustained injuries in the road accident on 18.09.2006 at Press Enclave Road near Modi Hospital due to rash and negligent driving of offending vehicle no. DL-1LE-6568 by R-1, owned by R-2 and insured with R-3 ?
2. To what amount the petitioner is entitled and from whom?
3. Relief.”*

7. The Appellant/claimant appeared as a witness and tendered her affidavit as Ex. PW1/A while relying upon the documents Ex. PW1/1 to Ex. PW1/29. Sh. Radhey was also examined as an eyewitness to the said accident as PW2. On the other hand, Respondent no.3 in its defence examined Sh. Rajpal, Assistant Manager as R3W1.
8. After hearing both the sides, learned Claims Tribunal held that the light goods vehicle bearing no. DL-1LE-6568 was involved in the accident which resulted in injuries to the Appellant/claimant, and the said vehicle was being driven by the Respondent no.1 in a rash and negligent manner. Learned Claims Tribunal further granted compensation to the Appellant/claimant under various heads, which are stated as follow:



S.No.	Head	Compensation awarded
1.	Compensation for expenses incurred on Medical Treatment	Rs. 10,000/-
2.	Compensation for pain and suffering and enjoyment of life	Rs. 30,000/-
3.	Compensation for special diet, attendant charges and conveyance charges	Rs. 10,000/- + Rs. 10,000/- (attendant charges)
4.	Compensation for Loss of income	Rs. 20,000/-
5.	Loss of income on account of permanent disability	Rs. 4,14,000/-
6.	Loss of amenities	Rs. 30,000/-
	TOTAL	Rs. 5,24,000/- (Five Lakhs Twenty four Thousand Rupees)

9. The adequacy of grant of compensation has been assailed by Appellant by filing the instant appeal under Section 173 of the Act before this Court praying for suitable modification or enhancement of compensation granted in Suit No. 691/10.

SUBMISSIONS MADE ON BEHALF OF THE APPELLANT/CLAIMANT

10. Mr. Ashok Kumar Jha, learned counsel for the Appellant raised his objection with regard to the percentage of functional disability taken by the learned Claims Tribunal for computing future loss of income. It is argued by learned counsel that the appellant, at the time of the accident, was working as a Beldar, which requires manual labour and prolonged physical activity. As per the disability certificate, her bodily permanent disability caused due to the accident was assessed to be at 63%.

However, the learned Claims Tribunal took the functional disability of



the appellant as only 50%, ignoring the nature of work carried on by the Appellant. Learned counsel has contended that considering the fact that the Appellant has lost earning capacity and is unable to maintain herself, making her totally dependent on others, her functional disability is ought to be taken as 100% for purpose of computing future loss of income.

11. Learned counsel has further submitted that the Appellant was working as a Beldar and was earning Rs. 5,000/- per mensem at the time of accident. The same has not been denied or contested by the Respondents. Learned Claims Tribunal erroneously adopted Rs. 3,312/- per month as the monthly income of the Appellant on the basis of minimum wages for unskilled worker for purpose of calculating the loss of income. It is, therefore, contended that the income shall be adopted as Rs. 5,000/- instead of Rs. 3,313/- for computing compensation.
12. Moreover, it is submitted that the Appellant is entitled for addition of 40% towards the future prospect as per the ruling in the case of *National Insurance Co. Ltd. v. Pranay Sethi*, reported as (2017) 16 SCC, since she was aged 33 years at the time of accident. Furthermore, the compensation granted under various other heads are on a lower side and does not adequately compensate the Appellant, considering the nature of her disability and loss caused due to the said accident. Hence, learned counsel is seeking appropriate modification/enhancement of the compensation granted by the learned Claims Tribunal in the interest of justice.



SUBMISSIONS MADE ON BEHALF OF THE RESPONDENTS

13. Mr. J.P.N. Shahi, learned counsel appearing for the Respondent No.3 Insurance Company has contested the claims of the Appellant with regard to the functional disability suffered by the Appellant. It is submitted that learned Claims Tribunal has rightly taken appellant's functional disability as 50% as per the judgement delivered in the case of ***Raj Kumar v. Ajay Kumar*** reported as ***(2011) 1 SCC 343***. Hence, it requires no interference as sought by the Appellant.
14. Learned counsel for the Insurance Company has fairly admitted to the fact that the Appellant is entitled to the 40% of future prospects as per the ***Pranay Sethi case***, instead of 30% as granted by the learned Claims Tribunal. However, apart from this, the learned Claims Tribunal has reasonably and adequately compensated the Appellant under each and every head, and therefore no such enhancement in the quantum of compensation is required in favour of the Appellant. Based on these submissions, learned Counsel for the Insurance Company prays for the dismissal of the present Appeal.

LEGAL ANALYSIS

15. This Court has heard the arguments advanced by both the parties and examined the records and judgments relied upon by the parties.
16. Before taking up the issue of modification of the Impugned Award, it is pertinent to advert to the jurisprudence laid down by Courts with regards to the quantum of compensation in motor vehicle accident cases. As per Section 168 of the Act, a Tribunal is required to "*make an award determining the amount of compensation which appears to it to*



be just". The Tribunals/Courts shall aim to compensate the victim of the accident in a manner which is "just", so as to place the victim in a position at which he was just before the accident, approximately, if not completely.

17. The law laid down in the case of **Pappu Deo Yadav v. Naresh Kumar & Ors.** reported as **2020 SCC OnLine SC 752**, the Hon'ble Supreme court observed that:

"6. The principle consistently followed by this court in assessing motor vehicle compensation claims, is to place the victim in as near a position as she or he was in before the accident, with other compensatory directions for loss of amenities and other payments. These general principles have been stated and reiterated in several decisions.

.....
8. This court has emphasized time and again that "just compensation" should include all elements that would go to place the victim in as near a position as she or he was in, before the occurrence of the accident. Whilst no amount of money or other material compensation can erase the trauma, pain and suffering that a victim undergoes after a serious accident, (or replace the loss of a loved one), monetary compensation is the manner known to law, whereby society assures some measure of restitution to those who survive, and the victims who have to face their lives."

(Emphasis Supplied)

18. The Hon'ble Supreme Court in the case of **Raj Kumar** (Supra) provided valuable guidance with respect to the parameters or heads under which the compensation shall be granted to a motor accident victim. Relevant extract of the judgement has been reproduced herein below:

"6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)



(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

19. It is cogent from the reading of the above stated law that the whole endeavor of the Courts/Tribunal shall be towards restoring the victim of the accident to his/her earlier position as much as possible, and recompensate the victim to enable him/her to lead a life as normal and comfortable as he/she was living prior to the date of the accident. Keeping the objective of the Act and the principle laid down by the Hon'ble Apex Court in mind, this court proceeds with the quantification of the compensation towards the injuries and to examine whether the compensation awarded by learned Claims Tribunal warrants any modification or not.



20. The Appellant, by way of the present appeal, has raised the following issues before this court for adjudication:

- a. Whether the monthly income of the Appellant at the time of accident for computing the loss of income was rightly estimated by the Claims Tribunal?
- b. Whether an addition of 40% to the established income shall be made towards future prospects for computing the future loss of income instead of 30%?
- c. Whether percentage of functional disability of the Appellant shall be taken as 100% in case of the Appellant, instead of 50%?
- d. Whether the quantum of compensation granted under heads of 'Medical expenses', 'Pain, suffering, and enjoyment of life', 'Special diet' and conveyance etc. are on a lower side, hence requires enhancement?

This court shall deal with the above stated issues *ad seriatim*.

INCOME OF THE APPELLANT/CLAIMANT AT THE TIME OF ACCIDENT

21. It is the contention of the Appellant/claimant that learned Claims Tribunal erred in assuming the income of Appellant on the basis of prevailing minimum wages of an unskilled worker at the time of accident. It is contended that the Appellant was self-employed as a Beldar which was fetching her Rs. 5,000/- per month. Based upon this, it is contended that learned Claims Tribunal ought to have taken Rs.5000/- as her monthly income while computing loss of income. However, this court, upon perusal of the documents placed on record, has observed that the Appellant/claimant neither produced any proof as



to the employment of Appellant nor of the income at the time of her accident. Mere deposition of the appellant that she was employed as a Beldar with a monthly remuneration of Rs. 5000/-, is not a sufficient and substantive proof to assume the aforesaid income.

22. Learned Claims Tribunal assumed the income of the appellant based upon the minimum wages for an unskilled worker during the year 2006 i.e., Rs. 3,312/- per month. It is a trite law that in case of absence of positive evidence so as to establish the occupation or the income of the victim, Courts shall determine the income on the basis of prevailing minimum wages at the time of accident. Therefore, in the opinion of this court, learned Claims Tribunal did not err in assuming the income of the appellant on the basis of the minimum wages of an unskilled worker. Hence, the income of the appellant at the time of accident stands at Rs. 3,312/- per month, and same shall be utilized while computing loss of income.

ADDITION OF FUTURE PROSPECT FOR CALCULATING FUTURE LOSS OF INCOME

23. The argument raised by the learned counsel for the Appellant with regards to the future prospects is strictly based on the established legal principle as settled in the case of *Pranay Sethi* (Supra). Since the Appellant was of 33 years of age on the date of the accident, an addition of 40% of the established income of the Appellant has to be granted under the head of 'future prospects'. It is relevant to refer to the law laid down by the Apex court in the case of *Pranay Sethi* (Supra) with respect to the above stated issue:



“....The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable.”

Therefore, the Appellant is entitled to an addition of 40% of established income towards the future prospects as per the law laid down by the Hon’ble Apex court in ***Pranay Sethi*** (Supra) instead of 30% as granted by learned Claims Tribunal.

ASSESSMENT OF THE APPELLANT’S FUNCTIONAL DISABILITY

24. It is submitted on behalf of the Appellant that learned Claims Tribunal overlooked the gravity of the impact of the accident on professional as well as personal life of the Appellant. It is submitted that learned Claims Tribunal erroneously assessed the functional disability of the Appellant as 50%. Learned counsel has pressed for the assessment of functional disability as 100% while relying upon the ratio passed by the Hon’ble Apex court in the case of ***Raj Kumar*** (Supra). It becomes crucial to refer to the observation made by the Hon’ble Apex Court in aforesaid judgment:

“Assessment of future loss of earnings due to permanent disability

8. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which



is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accident injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("the Disabilities Act", for short). But if any of the disabilities enumerated in Section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

9. The percentage of permanent disability is expressed by the doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body cannot obviously exceed 100%.

10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning



capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation... ”

25. It is claimed by the Appellant that the bodily disability, due to the accident, has resulted in loss of ability to discharge her duties efficiently and consequent loss of her earning capacity. It has been recorded by learned Claims Tribunal that the disability certificate received indicates that Appellant suffered right eye post-traumatic optic atrophy with a disability of 30% along with right sided moderate hemiparesis with a disability of 50%. Using the combined formula, patient's disability was assessed at 63%. However, learned Claims Tribunal took functional disability of the Appellant as 50% considering factors such as nature of work and impact of physical disability on Appellant's life.
26. The appellant was 33 years of age and was working as a Beldar at the time of her accident. The Medical Board constituted by Safdarjung Hospital observed that she has right eye post-traumatic optic atrophy with a disability of 30% and also has right sided moderate hemiparesis with a disability of 50%. Hence, using the combined formula, the Medical Board assessed the Appellant's disability at 63%. The functional disability of the Appellant must have affected her earning capacity considerably. Considering the law laid down in the case of **Raj Kumar** (Supra) and also the nature of job performed by the Appellant,



this court is of the considerate opinion that the learned Claims Tribunal ought to have assessed the functional disability of the Appellant as 63% instead of 50%. Hence, the Appellant's functional disability is fixed as 63% as assessed by the Medical Board.

MODIFICATION IN VARIOUS HEADS OF THE COMPENSATION GRANTED BY THE CLAIMS TRIBUNAL

27. Learned Claims Tribunal granted Rs.10,000/- towards the medical expenditure incurred by the Appellant during treatment period. However, learned Claims Tribunal failed to compensate the Appellant for the future cost of medical treatment. This court finds it reasonable and just to award a sum of Rs. 20,000/- towards the head of 'future medical expenditure'.
28. Apart from this, Rs. 30,000/- was awarded as compensation under the head of 'Loss of amenities'. However, keeping in view the fact that the Appellant is a married female and significance of the gratuitous services rendered by a married woman to her family, the sum of Rs.30,000/- seems to be on a lower side. Due to the said disability, she must have been barred from performing her duties towards the family and fulfilling her professional commitments with earlier vigor. Although the gratuitous services rendered by a female cannot, in any case, be quantified into a monetary value, however, for the sake of justice, this court modifies the compensation towards 'loss of amenities' from the sum of Rs. 30,000/- to Rs. 50,000/-. Hence, the compensation for 'loss of amenities' stands at Rs. 50,000/- from Rs. 30,000/-.



29. This court, however, does not find it reasonable to interfere with the quantum of compensation awarded by learned Claims Tribunal under the heads of 'Pain and suffering and Loss of enjoyment', 'Special diet, Attendant and conveyance charges'. Therefore, the contention raised by the Appellant with respect to the enhancement in other heads, apart from those discussed above, is hereby rejected.
30. Accordingly, in light of the above held discussion, the modified compensation stands as under:

S.No.	Head	Compensation awarded
1.	Compensation for expenses incurred on Medical Treatment	Rs. 10,000/-
2.	Compensation for future medical expenditure	Rs. 20,000/-
3.	Compensation for Pain and suffering and loss of enjoyment of life	Rs. 30,000/-
4.	Compensation for special diet, attendant charges and conveyance charges	Rs. 20,000/-
5.	Compensation for Loss of income during period of treatment	Rs. 20,000/-
6.	Loss of income on account of permanent disability (Rs. 3312 + 40% of Rs. 3312) X 12 X 63% = Rs. 35,054.21/- Multiplier = 16	Rs. 5,60,867.33/-
6.	Loss of amenities	Rs. 50,000/-
	TOTAL	Rs. 7,10,867.33/- (rounded as Rs.7,10,867/-) (Seven Lakhs Ten Thousand Eight hundred and Sixty Seven Rupees)



31. The compensation awarded by learned Claims Tribunal, therefore, stands enhanced from Rs. 5,24,000/- to Rs. 7,10,867/-.
32. Hence in view of the same, the Respondent no.3, being insurer of the offending vehicle, is directed to deposit the differential amount with an interest at the rate of 9% per annum from the date of filing of the present Appeal till the date of deposit with the Registrar General of this Court within a period of four weeks from today. Upon deposit of the said differential amount, Registry is directed to release the complete awarded amount along with up-to-date interest to the Appellant within a period of four weeks. The Statutory deposit shall also be released to the Appellant.
33. With the above directions, appeal is allowed.
34. No order as to costs.

GAURANG KANTH, J.

JULY 13, 2023
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