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

Reserved on : 09.11.2022
% ***Pronounced on : 31.05.2023***

\+ **MAC.APP. 234/2017**

RAJDEEP HARRISON ..... Appellant

Through: Ms. Pooja Goel and Mr. Manish Maini, Advocates along with appellant in person.

versus

NATIONAL INSURANCE CO LTD & ORS ..... Respondents

Through: Ms. Rakhi Dubey, Advocate for Ins. Co.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. The appellant-claimant suffered injuries in a motor vehicular accident that occurred on 31.01.2014 on account of negligent driving of a car bearing Registration no. DL-2CAS-5737 and in the consequence was rendered (per Ex. PW8/A) to be a case of *knee dislocation, foot lisfranc and distal radius with permanent physical disability of 41% in relation to left upper limb and both lower limbs*.

2. The Ld. Tribunal vide the impugned Award dated 08.08.2016 awarded Rs.13,66,200/- as compensation with interest at the rate of 9%

p.a., inter alia, holding the appellant to be functionally disabled to the extent of 15%. The tribunal awarded the said compensation making the assessment under the heads of future loss of income, pain & sufferings, loss of amenities & enjoyment of life, servant/attendant charges, conveyance & special diet, medical bills and loss of wages.

3. The appellant in the present appeal is seeking enhancement of the compensation, mainly on the ground that the amount of compensation granted by the Ld. Tribunal is inadequate keeping in view the nature of injuries and permanent disability suffered by the appellant.

4. Ld. Counsel appearing on behalf of the appellant has contended that the Ld. Tribunal has significantly failed in appreciating the functional disability of the appellant who was a Technician by profession and would not be able to perform his work efficiently, especially after his retirement due to the permanent disability suffered by him and therefore, the compensation awarded towards future loss of income is not just and proper. It is submitted that the Ld. Tribunal erred by not considering transport allowance to be a part of the appellant's net salary and has also not taken into consideration any future increase in the earnings of the appellant. It is contended that the Ld. Tribunal erred in awarding less compensation towards the non-pecuniary heads, i.e., pain & suffering and loss of amenities of life and looking at the extent of disability and condition of the claimant, the compensation towards these heads should be increased to atleast Rs. 2,00,000/- each.

Furthermore, it is prayed by the Ld. Counsel for the appellant that compensation be granted for permanent physical disability, shortened life span due to permanent disability and loss of matrimonial life and family obligations as well. Lastly, it is submitted that the rate of interest be enhanced from 9% p.a. to 12% p.a.

5. It is borne out from the records that as per DL and PAN Card (Ex.PW2/5 and PW2/6), the date of birth of the appellant is shown as 02.10.1970 and accordingly, his age was taken as 44 years. As per the judgment passed by the Hon'ble Supreme Court in the case of ***Sarla Verma & Ors. vs. DTC & Anr. [(2009) 6 SCC 121]***, if the claimant is aged 41 to 45 years, the multiplier 14 is applicable. In the present case, the appellant's age was taken to be 44 years and as such the Ld. Tribunal has wrongly taken the multiplier of 13 while calculating the compensation amount and therefore, the '*Multiplier 14*' is to be applied in the instant case.

6. Ld. Counsel for the appellant has claimed that the amount of Rs. 60,000/- towards pain and suffering and Rs. 50,000/- towards loss of amenities & enjoyment of life are on the lower side and a higher amount should have been awarded. She has further claimed that the Ld. Tribunal has erred in not awarding any compensation for permanent physical disability, loss of expectation of life and for loss of matrimonial life.

7. In this regard, it is observed that combined with the compensation for *'Pain and Sufferings'* and *'Loss of Amenities and Enjoyment of Life',* Ld. Tribunal has awarded a total sum of Rs. 1,10,000/- to the appellant towards non-pecuniary damages.

8. Notably, in ***Raj Kumar vs. Ajay Kumar [(2011) 1 SCC 343],*** the Hon'ble Supreme Court has held and observed as follows:

> *"10. .....It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may."*

9. In view of the foregoing, I find no ground to interfere with the amount awarded to the appellant as non-pecuniary damages.

10. As far as the contention of the Ld. Counsel for the appellant that the transport allowance has been wrongly deducted from the compensation amount and it forms a part of the salary does not cut much ice as the transport allowance has been rightly deducted by the Ld. Tribunal while calculating the compensation amount. Reliance can be placed on the judgment of Division Bench of Madras High Court in ***D.Shanmugam & Ors. vs. D.Jayakumar & Ors., C.M.A. No. 1685/2015***, in which it has been held and observed as follows:

> *"34. As per the decision of Honb'le Andhra Pradesh High Court, in S.Narayanamma & Ors V. Secretary to Government of India, Ministry of Telecommunications and Ors, reported in 2002 ACC 582, allowances, like travelling allowance, allowance for newspapers/periodicals, telephone, servant, club-fee, car maintenance, etc., do not form part of income and that the same can be deducted."*

11. Furthermore, keeping in view the settled legal principles laid down by the Hon'ble Supreme Court in ***S. Chandrasekharan & Ors. vs. M. Dinakar & Anr., Civil Appeal Nos. 4688-4689 Of 2022(Arising out of SLP (C) Nos. 8119¬8120 of 2019)*** and ***National Insurance Company Ltd. vs. Mannat Johal & Ors., Civil Appeal Nos.4079-4081 Of 2019(Arising out of SLP (C) Nos. 742-744 Of 2019)***, the rate of interest stands reduced from 9% per annum to 7.5% per annum from the date of filing of the claim petition till the date of realization.

12. In view of the above, the impugned award dated 08.08.2016 to the said extent requires a modification and therefore, it is directed that the compensation amount be re-computed after considering the *'Multiplier 14'* and reducing the *rate of interest to 7.5% per annum.* On that basis, the compensation amount shall be deposited by the respondent- Insurance Company, with the Tribunal within a period of four weeks of the computation by the Tribunal and the same be released to the appellant-claimant in terms of the scheme of disbursement which shall be specified therein.

13. The appeal along with pending applications, if any, stands disposed of subject to the above said modifications in the award. Trial Court Record be sent back along with a copy of this Judgment for compliance.

14. The matter shall be listed before the concerned Tribunal on 04.07.2023 for the purpose of re-computation and compliance of the directions issued herein.

RAJNISH BHATNAGAR, J

MAY 31, 2023/p