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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 16.01.2023

+ MAC.APP. 445/2016

NIRDOSH KUMAR

..... Appellant

Through: Mr.Manish Maini with Ms.Yashika Miglani, Mr.Vibhor Jain, Advs.

versus

SONU & ORS (ORIENTAL INSURNACE COMPANY LTD)

..... Respondent

Through: Mr.R.K.Tripathi, Adv for R-3.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present appeal under Section 173 of the Motor Vehicles Act, 1988 filed by the claimant seeks to assail the award dated 22.01.2016 passed by the learned Motor Accident Claims Tribunal, Delhi in Suit no. 313/2010 insofar as it relates to the quantum of compensation, which it is contended is inadequate.

2. Vide the impugned award, the learned Tribunal has awarded a sum of Rs.15,59,360/- along with interest @ 9% per annum as compensation to the appellant. The said compensation has been awarded under the following eight heads:-

S.No.	Compensation under various heads	Amount awarded
1.	Loss of income	Rs. 48,000/-
2.	Loss of future earning capacity	Rs. 9,21,600/-

3.	<i>Pain and suffering</i>	<i>Rs. 50,000/-</i>
4.	<i>Loss of enjoyment of amenities of life</i>	<i>Rs. 60,000/-</i>
5.	<i>Conveyance and special diet</i>	<i>Rs. 30,000/-</i>
6.	<i>Medical expenses</i>	<i>Rs. 2,90,110/-</i>
7.	<i>Attendant charges</i>	<i>Rs. 20,000/-</i>
8.	<i>Artificial Limb</i>	<i>Rs. 1,39,650/-</i>
	<i>Total</i>	<i>Rs.15,59,360/-</i>

3. Since the parties are ad idem regarding the details of the unfortunate accident which took place on 07.03.2010, wherein the appellant suffered grievous injuries leading to amputation of his right leg below the knee and 60% permanent disability of his right leg, necessitating the use of an artificial limb, a detailed discussion regarding the accident and the nature of injuries is not deemed necessary.

4. Learned counsel for the appellant submits that the appellant is aggrieved only in so far as the compensation awarded towards “loss of future earning capacity”, “pain and suffering”, “loss of enjoyment of amenities of life” and “artificial limb” are concerned. He submits that the compensation awarded under the aforesaid heads at serial nos.2, 3, 4 & 8 are highly inadequate.

5. He submits that while awarding compensation of a sum of Rs. 9,21,060/- towards “loss of future earning capacity”, the learned tribunal has considered the appellant’s functional disability as 40% even though he is suffering from a permanent disability of 60% in his leg. He contends that the learned Tribunal failed to appreciate that the appellant was working as a Foreman, whose primary job entailed running up and down in “under construction high rise buildings and construction sites”, which he is not in a position to do anymore on account of the amputation of his right leg. The

appellant, is therefore not in a position to carry out strenuous physical work and consequently his working capacity has been reduced by over 60%. He submits that in a case like this where the appellant was working at construction sites, it was a fit case where in the light of his permanent disability of 60% in the right leg, the learned tribunal ought to have accepted his functional disability of 100%. In support of his plea, he seeks to place reliance on a decision of a Co-ordinate Bench of this Court in *New India Assurance Co. Ltd. v. Manoj Kumar & Ors.*[2018 ACJ 2409],

6. He next submits that the amount of Rs.50,000/- awarded under the head of “pain and suffering” is highly inadequate and the same should be enhanced to at least Rs.1,50,000/- as was done in *Manoj Kumar (Supra)*. Furthermore, the learned Tribunal also erred in awarding only a sum of Rs. 60,000/- towards “loss of enjoyment of amenities of life” by failing to appreciate the fact that on account of the amputation of his right leg, the appellant would be unable to carry out his routine work properly and would instead be dependent on others in every walk of life. He, therefore, contends that the amount awarded under both these heads be enhanced to Rs.1,00,000/-.

7. He finally submits that even though the learned Tribunal has awarded a sum of Rs. 1,39,650/- to the appellant towards cost of artificial limb, the learned Tribunal has failed to award any amount towards replacement and maintenance of the artificial limb. By placing reliance on the additional evidence of Ms.Samina Khan, Senior Prosthetist, Branch Manager, Endolite India Ltd. recorded on 19.07.2018, he submits that Ms. Samina Khan has clearly stated before this Court that the life of an artificial limb is about 5-6 years after which replacement is required periodically. He submits that

taking into account that the appellant is presently about 44 years of age, he will require at least three more replacements. He, therefore, prays that the appeal be allowed and the compensation awarded by the learned Tribunal be accordingly enhanced.

8. On the other hand, learned counsel for the respondent no.3/Oriental Insurance Company Ltd. opposes the appeal by urging that the appellant was working as a supervisor and despite permanent disability of 60% of his right leg, he can easily discharge his duties. He, therefore, contends that it cannot be said that the appellant is suffering from any functional disability of more than 40% as has been accepted by the learned Tribunal. Furthermore, the tribunal has wrongly computed the future prospects of the appellant by taking into account 50% increase in his “loss of future earning capacity”, whereas in terms of the decision of the Apex Court *National Insurance Co. Ltd. vs Pranay Sethi And Others*[(2017) 16 SCC 680], the same was required to be computed by taking into account only a 40% increase.

9. He further submits that the decision in *Manoj Kumar (Supra)* relied upon by the appellant is not applicable as in the said case, the Court was dealing with an accident which took place in 2013, while in the present case, the accident occurred in 2010. He therefore contends that the amount awarded towards “pain and suffering” and “loss of enjoyment of amenities of life” are commensurate with the date of accident. He finally submits that in so far as the appellant’s claim for replacement of artificial limb is concerned, there is nothing on record, as on date, to show that the appellant really needs a replacement of his artificial limb and, therefore, prays that no amount should be awarded under this head.

10. Having considered the submissions of the learned counsel for the

parties and perused the record as also the decision of this Court in *Manoj Kumar (supra)*, I find that the appellant is justified in urging that since he was working as a Foreman, even if his job requirement was merely supervisory, he would be often required to climb under construction buildings at the construction sites. It is clearly evident that on account of the amputation of his right leg, he would not be in a position to climb these buildings as effortlessly as he was able to do so before the accident. The appellant is, therefore, justified in urging that in the present case his functional disability could not be taken as merely 40%. However, taking into account that the appellant is not wholly incapacitated, I am of the view that it would be appropriate that his functional disability is also taken as 60% on account of the permanent disability of his right leg and therefore the compensation awarded towards the loss of future earnings capacity needs to be suitably enhanced.

11. However, I also find merit in the plea of the learned counsel for the respondent no.3 that the amount payable under the head of “loss of future earning capacity” requires to be quantified by taking into account 40% increase towards the future prospects and not 50%. Accordingly, taking into account that the monthly income of the appellant has been taken as Rs 8,000/-, the amount awarded under the head of “loss of future earning capacity” is required to be computed as Rs. $(8000 + 40\% \text{ increase}) \times 12 \times 16 \times 60\% \text{ functional disability}$, which amount works out to Rs.12,90,240/-.

12. Now, as far as the amount awarded to the appellant towards “pain and suffering” and “loss of enjoyment of amenities of life” is concerned, I am of the view that taking into account the pain from which the appellant continues to suffer on account of his artificial limb, the amount needs to be

enhanced to some extent. The compensation towards “pain and suffering” is accordingly enhanced to Rs.1,00,000/- instead of Rs.50,000/- and the amount towards “loss of enjoyment of amenities of life” is enhanced from Rs.60,000/- to Rs.1,00,000/-.

13. Finally, I may now deal with the appellant’s claim for cost of replacement of the artificial limb from time to time. Taking into account that the appellant is still about 44 years of age, even though the respondent no.3 is justified in urging that till date, the appellant has not sought any replacement of his artificial limb, the necessity of his requiring replacement in the future cannot be ruled out. It is, therefore, directed that the appellant would be entitled to two replacements of his artificial limb, the cost whereof is capped at Rs.3,50,000/- and Rs.5,00,000/- respectively for the first and second replacement. It is, accordingly, directed that in case the appellant requires any replacement of the artificial limb in the future, the amount for two replacements in terms of this order would be directly remitted to the manufacturer of the artificial limb by the respondent no.3, as and when required.

14. The appeal is, accordingly, allowed by enhancing the compensation in the following terms:-

<i>Compensation under heads</i>	<i>Amount awarded by Tribunal</i>	<i>Modified amount by this Court</i>
<i>Loss of future earning capacity</i>	<i>Rs. 9,21,600/-</i>	<i>(8000 + 40% increase) X 12 X 16 X 60% functional= Rs.12,90,240/-. (increase of Rs 3,68,640)</i>

<i>Pain and suffering</i>	<i>Rs. 50,000/-</i>	<i>Rs.1,00,000/- (increase of Rs. 50,000)</i>
<i>Loss of enjoyment of amenities of life</i>	<i>Rs. 60,000/-</i>	<i>Rs.1,00,000/- (increase of Rs. 40,000)</i>
<i>Total</i>	<i>Rs.10,31,600/-</i>	<i>Rs.14,90,240/- (Increase of Rs. 4,58,640)</i>

15. Besides this enhanced compensation, which along with interest at the rate of 9% per annum, will be paid to the appellant within eight weeks, the respondent no.3 will also bear the costs towards the replacement of the artificial limb as and when required in terms of para 13 of this order.

16. The appeal is, accordingly, disposed of in the aforesaid terms.

JANUARY 16, 2023
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REKHA PALLI, J