



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

Reserved on : 09.11.2022

Pronounced on : 31.05.2023

%

+

MAC.APP. 850/2016

NATIONAL INSURANCE CO LTD

..... Appellant

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

versus

RAJDEEP HARRISON & ORS

..... Respondents

Through: Ms. Pooja Goel and Mr. Manish
Maini, Advocates for R-1 along with
R-1 in person.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. The present appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 08.08.2016 with the following prayers:-

"A) Set aside/reject the order and judgment dated 08/08/2016 passed by Ms. Ravinder Bedi, PO MACT, Karkardooma, Delhi in Suit No. 367/16 titled as Rajdeep Harrison v. Sabir Ahmad & Others whereby the appellant/ National insurance Company is directed to pay Rs. 13,66,200/-.

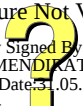
B) Pass such other and further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

MAC. APP. 850/2016

Page 1 of 7

Signature Not Verified

Digitally Signed By: KAMAL
KANT MENDIRATTA
Signing Date: 31.05.2023
16:33:04





2. In brief the facts of the case are that on 31.01.2014 at about 6.00 pm, Rajdeep Harrison, Respondent No. 1 herein, was riding his motorcycle with Uma Chopra sitting as a pillion rider. When they reached Vikas Marg towards Geeta Colony Turn, near Shakarpur, a vehicle i.e., EECO ambulance car bearing Registration no. DL-2CAS-5737 (offending vehicle) being driven by Sabir Ahmed, at a very high speed hit the motorcycle. Due to the impact, the motorcyclist and the pillion rider fell down, resulting in grievous injuries to them. Rajdeep Harrison was taken to JPN Trauma Centre and was treated there for multiple rib fractures, fracture of both upper limb bones and abrasion injuries. A case FIR No. 226/14, under Sections 279/338/304-A IPC was registered at Police Station Shakarpur.

3. I have heard the learned counsel appearing on behalf of the appellant as well as respondent no. 1 and have perused the records of this case.

4. It is submitted by learned counsel for the Appellant- Insurance Company that the learned Tribunal has erroneously granted Rs.10,06,200/- as future loss of income to respondent No.1. It is further submitted that on one hand the Ld. Tribunal duly considered that the disabilities suffered by the respondent No.1 have not affected the functional aspect much, but on the other hand, the Ld. Tribunal took functional disability of respondent No. 1 to be 15%, which is on the higher side. It is contended by the Ld. Counsel for the Appellant that the respondent No. 1 is not entitled to any future loss of income and the Ld. Tribunal has granted an exorbitant amount of compensation under all heads.



5. On the other hand, it is submitted by learned counsel appearing on behalf of respondent no. 1 that being aggrieved by the impugned Award dated 08.08.2016, passed by the Ld. Tribunal, respondent no. 1 has also preferred an appeal i.e., MAC. APP. 234/2017, seeking enhancement of the compensation on the ground that the Ld. Tribunal failed to consider that the claimant is 41% permanently disabled in relation to his whole body and has wrongly taken 15% functional disability which qua his work or vocation is on the lower side. It is further submitted that the claimant shall be awarded a sum of Rs. 28,17,360/- (43,000/- +30%x12x14x30%) towards loss of future earnings and the compensation awarded towards other heads must also be significantly enhanced.

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

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

Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, 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. ..."

7. The compensation awarded by the Ld. Tribunal by way of impugned Award dated 08.08.2016 is as under:

Future Loss of Income	Rs. 10,06,200/-
Pain & Sufferings	Rs. 60,000/-
Loss of Amenities & Enjoyment of Life	Rs. 50,000/-
Servant/attendant charges	Rs. 10,000/-
Conveyance & special diet	Rs. 20,000/-
Medical Bills	Rs. 5,000/-
Loss of Wages	Rs. 2,15,000/-
Total	Rs. 13,66,200/-



8. A bare perusal of the impugned Award dated 08.08.2016 shows that the Ld. Tribunal has dealt with each and every issue in great detail. It is evident from the record that due to the injuries sustained, the respondent No.1, namely, Rajdeep Harrison's working capacity was affected on account of weakness of left upper limb and both lower limbs. Perusal of the testimony of PW-7, Ms. Sunita Narang further shows that on account of injuries sustained by the respondent No.1, he had to take leaves from 31.01.2014 till 31.03.2014. He again took 60 days leave from 01.04.2014 till 30.05.2014. The record Ex.PW7/2, reveals that the respondent No.1, took further medical leaves from 31.05.2014 to 29.06.2014 and finally rejoined his office on 30.06.2014. Therefore, the respondent No.1 because of the injuries sustained by him in the accident had to take five months leave for undergoing treatment. Dr. Hemant Sharma, Specialist, (Orthopedics), Hedgewar Hospital (PW-8) had also proved on record the Disability Certificate, Ex.PW8/A mentioning *41% permanent disability of respondent no.1* in relation to his left upper limb and the Ld. Tribunal after considering the overall facts and circumstances, assessed the *functional disability to be 15%*.

9. In ***K. Suresh vs. New India Assurance Co. Ltd. [(2012) 12 SCC 274]***, the Hon'ble Supreme Court has observed and held as follows:

*"10. It is noteworthy to state that an adjudicating authority, while determining the quantum of compensation, has to keep in view the sufferings of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned. **Hence, while computing compensation the approach of the Tribunal or a court***



has to be broad-based. Needless to say, it would involve some guesswork as there cannot be any mathematical exactitude or a precise formula to determine the quantum of compensation. In determination of compensation the fundamental criterion of "just compensation" should be inhered."

10. In *Jagdish vs. Mohan* [AIR 2018 SC 1347], the Hon'ble Supreme Court observed and held as follows:

"14. In making the computation in the present case, the court must be mindful of the fact that the Appellant has suffered a serious disability in which he has suffered a loss of the use of both his hands. For a person engaged in manual activities, it requires no stretch of imagination to understand that a loss of hands is a complete deprivation of the ability to earn. Nothing at least in the facts of this case can restore lost hands. But the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law. Our conversations about law must shift from a paternalistic subordination of the individual to an assertion of enforceable rights as intrinsic to human dignity."

11. Keeping in view the entire facts and circumstances of the present case, this court is of the opinion that the impugned award does not warrant any interference by this court for reduction of the compensation amount awarded by the Tribunal.

12. However, at this stage, it is pertinent to note that the issue of enhancement of the awarded compensation amount shall be dealt with in



MAC.APP. 234/2017, which is a cross-appeal filed by respondent no.1, namely, Rajdeep Harrison.

13. In view of the above, the present appeal stands dismissed alongwith pending applications, if any.

RAJNISH BHATNAGAR, J

MAY 31, 2023/P

