



2024:DHC:9283



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

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Date of Decision: 8th November, 2024+ **MAC.APP. 86/2021****SH PRASHANT SHARMA**

.....Appellant

Through: Mohammad Mustafa and Md.
Maroof, Advocates.

versus

AMIT NEHRA & ORS.

.....Respondents

Through: Counsel for Respondents (appearance
not given).**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (Oral)**

1. *The Appeal under Section 173 of the Motor Vehicle Act, 1988 ('M.V. Act' hereinafter)* has been filed on behalf of the Appellant, Mr. Prashant Sharma, seeking enhancement of compensation granted in the sum of Rs.10,33,574/- along with the interest @9% p.a. vide Award dated 07.10.2020 in *MACT Petition No. 1008/2017*.

2. The Compensation amount is sought to be enhanced on the following grounds:-

- (i) that the Petitioner had suffered *Permanent Disability* of 26% of right lower limb but the learned Tribunal has erroneously calculated the *functional disability* as 13%, without considering that the Petitioner/Claimant is an Advocate by profession and has difficulty in moving for work from one place to another because



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of Permanent Disability. Reliance is placed upon Raj Kumar Vs. Ajay Kumar, 2011(1) SCC 343.

(ii) that no *future prospects* have been granted on account of Permanent Disability; and

(iii) Rs. 50,000 for pain and agony is on a lower side considering that his permanent disability is “*non-progressive/not likely to improve*”.

3. *Learned counsel on behalf of the Insurance Company* has submitted that the compensation has been calculated in a fair and just manner and does not require any modification.

4. **Submissions heard and record perused.**

Loss of Future Income:

Assessment of % of Functional Disability: -

5. The Petitioner in his *Affidavit in Evidence*, Ex.PW-1/X had deposed that on 09.04.2017, at about 11.00 PM, he was going from Badhkhai Mor to Old Faridabad, Haryana in an auto rickshaw bearing registration no. HR 38T 7858 along with other two passengers, when the offending vehicle SUV (Tata Safari) bearing no. HR 51 AH 7086 which was being driven with rash and negligent manner and at a very high speed by Respondent No.1/Driver, collided with the rickshaw with a violent force from behind, due to which the Claimant received multiple grievous injuries and fractures in the right limb. Thus, the FIR No.182/2017 under sections 279/337/338/304-A IPC, 1806 was registered at P.S. Sector 31, Haryana, on 10.04.2017.

6. He was under treatment in Sarvodaya Hospital, Faridabad, Haryana, BM Gupta Hospital Pvt. Ltd. Uttam Nagar, New-Delhi and remained bed-ridden for 6 Months. He proved his Original Medical Bills as Ex. PW-1/3,



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MLC and Discharge Summary of Sarvodaya Hospital, Faridabad, Haryana and BM Gupta Hospital Pvt. Ltd. Uttam Nagar, New Delhi as *Mark A and B*.

7. A perusal of the Medical Record of the Claimant shows that he had suffered *a fracture in the Tibia and Patella fracture as well as an injury to the Radius of Left Hand, requiring him to undergo a Patella TBW removal and plating in the forearm.*

8. The *Disability Certificate of P.T. Madan Mohan Malaviya Hospital, Malviya Nagar, New Delhi dated 20.09.2018*, records that the Claimant had suffered **26% permanent disability** in respect to right lower limb and the condition is *non-progressive and not likely to improve.*

9. The *main grievance* of the Claimant is that he was a practicing lawyer at Sultanpur, Uttar Pradesh and earning about Rs. 50,000/- per month. Because of the injuries received by him, he has been unable to work properly till date. He has proved his ID Card issued by the Bar Council of Uttar Pradesh – *Ex. PW-1/1 Colly (OSR)* and Income Tax Return for the Assessment Year 2015-16 and 2018-2019, which are collectively *Mark C*.

10. Firstly, a perusal of the ITR for the AY – 2015-16 reflects the net Income of the Claimant after deductions, as Rs. 2,32,000/- and the ITR for AY 2018-19 reflects his net Income as Rs. 2,96,000/-. *Thus, evidently he has continued to work, there is an evident increment in his income and no actual loss of salary is made out therefrom.*

11. However, while considering that the injured had suffered 26% Permanent Disability in respect to right lower limb, the Ld. Tribunal rightly applied the dictum of Ajay Kumar (Supra) and assessed the **Functional Disability of the Injured as 13%**. The learned Tribunal has fairly calculated



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the functional disability which does not warrant any interference.

Future Prospects: -

12. The *second ground* of challenge is that no Future Prospects have been granted in the light of *National Insurance Co. Ltd. vs. Pranay Seth & Ors.*, 2017 (16) SCC 680.

13. The Petitioner is entitled to addition of future prospects of 40% as he was below 40 years of age, in light of *Pranay Sethi* (Supra). Just because there is a minor increase in the Income of the Injured, it does not prove that the future prospects are not being impacted due to his disability. If he would have not been physically disabled, the increment in the income would have been much more. No adverse inference should be drawn against an injured person, only because he has tried to maintain a miniscule increment in his income despite his disability, only to disentitle him to “*just compensation*” when the sole object of the compensation is to restore him to a position as if he was never injured in the accident.

14. Thus, the Loss of Future Income is recalculated as under:-

- i. Income per month = Rs. 2,32,000/- / 12 = Rs. 19,350/-
- ii. Addition of 40% future prospects = 19350+ 7740 = Rs.27,090/-
- iii. **Total Loss of Future Income = Rs. 27,090/- X 12 X 13% X 16 = Rs. 6,76,166.4/-**

Non-pecuniary Heads:

15. The Claimant had further argued that the compensations granted for the “*Pain and suffering*” and other heads is also on the lower side and are liable to be enhanced.

16. It is evident that the injuries suffered by the claimant are grave and would have a substantial impact on his everyday functioning, especially as



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he would grow old.

17. In the recent judgment of K.S. Muralidhar v. R. Subbulakshmi, 2024 SCC OnLine SC 3385, the Apex Court discussed the artificial nature of computing compensation under Non-Pecuniary Heads and also, delved into the concept of “*pain and suffering*” which actually requires converting the pain and suffering into a reasonable monetary award. In the facts of that case considering that the injured was suffering from 90% Permanent Disability leading to 100% functional Disability, the Court granted a sum of Rs. 15,00,000/- towards compensation for “*pain and suffering*”.

18. It was elucidated that the concept of just compensation is rooted in the principle of *restitutio ad integrum*, which signifies the restoration of an individual to their original condition, as far as feasible, returning them to a state as though the incident/ accident had never happened. The quantification of non-pecuniary damages has consistently posed a challenge as there is no precise formula to calculate such compensation.

19. Every individual embarks on a unique journey in life, pursuing dreams, setting goals, and striving toward aspirations. When, through no fault of their own, they are thrust into an unfortunate circumstance that irrevocably alters the course of their lives, the emotional and psychological toll they endure—though intangible in its written expression—forms a substantial part of the ‘*pain and suffering*’ experienced alongside any visible disability that might be apparent to others.

20. In the present case, though the facts are not similar, however, the emphasis on the concept of *pain and suffering* becomes relevant.

21. It cannot be disputed that the injured is not in a sitting job. Being an advocate, he is required to appear in the Courtrooms and physical



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impairment related to mobility, can make it difficult to navigate courtrooms or office environments.

22. In light of the above, the Compensation for Pain and Suffering is enhanced to **Rs. 1,00,000/-**.

23. The compensation for Loss of enjoyment of Life and amenities is also enhanced from Rs. 1,00,000/- to **Rs.2,00,000/-**.

24. The compensation under other heads are justified and do not warrant any modification.

Relief :-

25. Thus, the total compensation is enhanced as under: -

Sl.No.	Heads	Compensation granted by the Tribunal	Compensation granted/enhanced by this Court
1.	Treatment	Rs.1,59,498/-	Same
2.	Conveyance	Rs.25,000/-	Same
3.	Special Diet	Rs.25,000/-	Same
4.	Attendant Charges	Rs.25,000/-	Same
5.	Loss of Income	Rs.1,16,100/-	Same
6.	Mental and Physical Shock	Rs.1,00,000/-	Same
7.	Pain & Suffering	Rs.50,000/-	Rs.1,00,000/-
8.	Loss of Enjoyment of Life and Amenities	Rs.1,00,000/-	Rs.2,00,000/-
9.	Loss of Future Salary	Rs. 4,82,976/-	Rs. 6,76,166.4/- rounded off to Rs 6,77,000/-
10.	Disfigurement	Rs. 50,000/-	Same
TOTAL COMPENSATION		Rs.10,33,574	Rs. 14,78,000/-



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26. The total amount of compensation granted to the Appellant thus, comes to **Rs. 14,78,000/-** along with interest @ 9% per annum as per the terms of the Award dated 07.10.2020.

27. The Appeal is accordingly disposed of along with pending Application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 8, 2024/RS

Signature Not Verified

Digitally Signed By: IKAS
ARORA

Signing Date: 29.11.2024
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