2024:DHC:9961

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

% ***Date of decision: 06th December, 2024***

\+ **MAC.APP. 286/2019& CM APPL. 9957/2020 (under Order V Rule 20 CPC)**

JAI PRAKASH
S/o Sh. Chander Bhan .....Appellant
Through: Mr. Pratap Singh and Mr. Arun Yadav, Advocates

versus

1. KHALID HUSSAN
S/o Md. Naim Hussan .....Respondent No.1

2. SALEEM AHMAD
S/o Sh. Saleemuddin ....Respondent No. 2

3. TATA AIG GENERAL INSURANCE CO. LTD.
...Respondent No.3
Through: Ms. Vandana Kahlon and Mr. Rudra Kahlon, Advocates for R-3.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T ***(oral)***

1. The present Appeal under *Section 173* of the *Motor Vehicles Act, 1908* has been filed against Award dated 31.03.2018 by the injured/Mr. Jai Prakash seeking enhancement of the compensation granted in the sum of Rs.8,86,354/- along with the interest @9%, on account of injuries suffered in the road accident on 17.02.2014.

2. The*Appellant has sought the enhancement of compensationon the followinggrounds*:-

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i. the injured was not a gratuitous passenger as he was travelling in the offending truck along with his honeybees; and that the Insurance Company has been wrongly exonerated from paying the compensation;

ii. that he was a skilled worker but the Minimum Wages of an unskilled workerhas been given;

iii. that he has suffered permanent disability of 53% of both lower limbs but the Functional Disability has been taken as 50% instead of 100% and;

iv. that no future prospects have been granted.

3. *Learned counsel on behalf of the Insurance Company* has submitted that neither in the Claim Petition nor in the Affidavit of Evidence had the injured anywhere stated that he was travelling in the truck with his goods. It is only in the cross examination for the first time that he claimed that his Goods were being carried in the truck. It is further submitted that nothing was recovered from the truck at the time of its seizure by the IO.

4. The learned counsel for the Respondent/Insurance Company was argued that the Tribunal has rightly adjudged the injured as a *gratuitous passenger.* There is breach of Fundamental Terms of the Policy and therefore, Insurance Company has been rightly exonerated from paying the compensation and the liability has been rightly fastened on the driver/owner.

5. The nature of work being undertaken by the injured was in the category of unskilled worker and has been rightly assessed accordingly. Also, the compensation granted under *Non-Pecuniary Heads, have been rightly assessed and do not merit any interference.*

6. It is further argued that the Functional Disability has been rightly taken

as 50% since as per his own admissions, he has been continuing to work. It is further submitted that *future prospects* may be considered in accordance with law.

7. The *Respondent Nos. 1 and 2,* the driver and owner of the offending vehicle, were served by way of Publication despite which they failed to appear in the present Appeal and were proceeded *ex-parte.*

8. **Submissions Heard and record perused.**

9. ***Briefly stated,*** on the night of 17.02.2014 at about 12:00 midnight, t appellant was travelling along with his colleagues, Deepak and Jitender, by Tempo bearing no. UP-21-AN-0922 being driven by its driver/Khalid Hussan from Tijara to Moradabad. When they reached Sarai Kale Khan, Delhi on Yamuna Bridge *via* Akshardham, the driver of the Tempo who was driving it in a rash and negligent manner, hit a bus which was going ahead with high speed, and he received injuries in the accident.

<u>Liability of Insurance Company to pay the Compensation: -</u>

10. The *first ground* of challenge is whether the injured/Appellant was travelling in the offending vehicle as *a gratuitous passenger.*

11. Learned counsel on behalf of the Appellant/injured has argued that he was not travelling in the Tempo as a gratuitous passenger. It has emerged in the evidence of the injured that he was travelling in the offending vehicle along with his*Honeybeesfrom Tijara to Moradabad,*but it has been overlooked by the learned Tribunal. Therefore, the findings that the injuredwas not gratuitous passenger as he was travelling as a passenger in the offending truck, are erroneous and liable to be set-aside.

12. Pertinently, though in the Petition as well as in the Affidavit of evidence, it has not been stated specifically by the Appellant that he was in the

business of Honeybees Rearing and Agriculture, but the fact remains that in his cross-examination on behalf of the Insurance Company, it was specifically suggested to him that he was not in the business of Honeybees Rearing or was not travelling in the offending vehicle along with his Honeybees. The injured specifically denied these suggestions and clarified in his cross-examination that he was travelling with Mr. Jitender and Mr. Deepak, from Tijara to Moradabad *along with his goods in the offending vehicle*. The very fact that the Insurance Company itself had put the suggestions clearly reflects that the injured was into the business of Honey Beekeeping.

13. One must not overlook and ignore that this is an Enquiry proceeding intended to adjudicate the fair and just compensation that is merited in a particular case. Hyper technical procedures of law and evidence cannot be imported while appreciating the evidence in such cases. Despite there being no mention in the petition or the affidavit of evidence, the Insurance Company had put these suggestions to the Petitioner not being in the business of Honey Beekeeping, thereby suggesting the truthfulness of the assertions of the Appellant.

14. Learned counsel on behalf of the Insurance Company, has vehemently contended that there is nothing in the Seizure Memo, prepared by the Police in respect of the offending vehicle to indicate that it was loaded with the Honeybees boxes. Merely because the Investigating Officer has chosen not to record whether the boxes were there or not, cannot lead to any kind of inference that the offending vehicle was not loaded with the goods of the injured. The Insurance Company aside from putting suggestions has failed to examine the Investigating Officer or the driver, to prove that the injured was travelling as a gratuitous passenger.

15. The comprehensive reading of the entire pleadings wherein the injured has mentioned specifically in Form-V, submitted that he was in the business of beehive rearing coupled with his evidence, the inevitable conclusion is that he was travelling in the vehicle with his goods and was accompanied by Mr. Jitender and Mr. Deepak.

16. ***The conclusion of the learned Tribunal that he was travelling as a gratuitous person is not tenable and is hereby set-aside. It is held that there is no breach of terms of Insurance Policy and the Insurance Company is liable to pay the compensation to the injured.***

<u>Loss of Earning Capacity due to Disability: -</u>

<u>Functional Disability: -</u>

17. The injured/Appellant has also asserted that though his Permanent Disability was 53% of both lower limbs, and is unable to pursue his business of Beehive Rearing or of Agriculture and his Functional Disability should have been assessed as 100%.

18. Though the injured has claimed that he has not been able to work because of the Physical Disability, but he himself in his cross-examination, has admitted that he is still doing the same work of rearing of Honeybees. He further deposed that though, earlier he had 150 boxes of Honeybees Rearing but now he is left with 8 boxes. He has also deposed that in addition, he had been doing agricultural work, which is his own work.

19. From his own evidence, it is evident that he has not been totally incapacitated but has been continued to do his business. Therefore, ***the learned Tribunal has rightly assessed the Functional Disability as 50%, which does not warrant any interference.***

Future Prospects: -

20. The next ground for enhancement of compensation, which has been agitated by the Appellant, is that no Future Prospects have been granted.

21. The Apex Court in *National Insurance Co. Ltd. v. Pranay Sethi,*(2017) 16 SCC 680has observed that *in case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years.* Thus, the claimant is entitled to an addition of 40% towards future prospects.

Minimum wages of a Skilled Worker:

22. The Appellant has claimed that he was in specialized Work of Honeybee Rearing and his wages should be taken as that of a skilled worker.

23. The Honey Bee rearing business indeed requires special Skills and the Minimum wages of the appellant should be assessed as that of a skilled Worker which is Rs. 6,270/- p.m.

24. Accordingly, the total loss of future income along with future prospects is calculated as under: -

Rs.6,270/- X 140/100 X 50/100 X 12 X 16 = Rs.8,42,688/-

25. The compensation is re-calculated as under:-

S.No.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
11.	**Pecuniary Loss:**		
(i)	Expenditure on treatment	Rs.87,034/-	Rs.87,034/-
(ii)	Expenditure on conveyance	Rs.20,000/-	Rs.20,000/-
(iii)	Expenditure on special diet	Rs.20,000/-	Rs.20,000/-

(iv)	Cost of nursing/attendant	Rs.25,000/-	Rs.25,000/-
(v)	Loss of earning capacity	NIL	**As below**
(vi)	Loss of income	Rs.15,000/-	**Rs.12,540/-** **On skilled wages**
(vii)	Any other loss which may require any special treatment or aid to the injured for the rest of his life.	NIL	NIL
12.	**Non-Pecuniary Loss:**		
(i)	Compensation for mental and physical shock	Rs.50,000/-	Rs.50,000/-
(ii)	Pain and suffering	Rs.50,000/-	Rs.50,000/-
(iii)	Loss of amenities of life	Rs.25,000/-	Rs.25,000/-
(iv)	Disfiguration	Rs.25,000/-	Rs.25,000/-
(v)	Loss of marriage prospects	NIL	NIL
(vi)	Loss of earning, inconvenience, hardships, disappointment, frustration, mental stress, dejectment, and unhappiness in future life etc.	NIL	NIL
13.	**Disability resulting in loss of earning capacity:**		
(i)	Percentage of disability assessed and nature of disability as permanent or temporary	53%	53%
(ii)	Loss of amenities or loss of expectation of life span on account of liability	Rs.25,000/-	**(As above)**
(iii)	Percentage of loss of	50%	50%

	earning capacity in relation to disability		
(iv)	Loss of future income-(income X percentage earning capacity X multiplier)	Rs.5,44,320/-	**Rs.8,42,688/-**
14.	**TOTAL COMPENSATION**	Rs.8,86,354/-	**Rs.11,70,000/- (rounded off)**

Relief:-

26. In view of the above, the Claimant is awarded total compensation of **Rs.11,70,000/-** along with the interest @9% per annum from the date of filing of the Petition till realization; to be disbursed in terms of the Award dated 31.03.2018. The Insurance Company is directed to deposit the enhanced Awarded amount within 30 days with the learned Tribunal.

27. The Appeal is allowed and disposed of accordingly along with the pending Application(s).

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 6, 2024
rk/RS