2024:DHC:7729

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

% ***Date of decision: 30th September, 2024***

\+ **MAC.APP. 127/2021**

JAGDISH KUMAR .....Appellant
Through: Mr. Varun Sarin and Ms. Parul Dutta, Advocates.

versus

RAMJANI @ KAILASH & ORS. .....Respondents
Through: Mr. Pankaj Gupta, Advocate.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

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

1. An Appeal under Section 173 of The Motor Vehicles Act, 1988 has been filed against the Judgment dated 09.01.2020 whereby the Appellant has been granted a *total compensation in the sum of Rs.18,19,770/-* along with interest @ 9% per annum.

2. The impugned Award has been challenged on the limited ground of the permanent Disability having been taken as 45% qua the whole body. The Appellant has submitted that he was a driver by profession and his income was taken on the basis of minimum wages for skilled labour which was at the relevant time, Rs.16,468/-. The Disability Certificate Ex.PW3/1 reflected the permanent disability suffered by the petitioner as 90% in relation to his left lower limb. However, the functional disability of the petitioner was taken as 45% qua the whole body and the loss of future income was accordingly calculated as Rs.14,45,067/-.

3. The grievance of the Appellant is that being a professional driver with the 90% of disability of left lower limb, the appellant has been rendered incapable of pursuing his vocation of driving and instead of reducing it to 45%, the functional disability should have been assessed as 100% and accordingly the compensation should have been calculated.

4. The Appellant has further challenged that the income has been wrongly assessed on the basis of minimum wages when the Appellant had deposed that he was earning Rs.40,000/- per month. Moreover, only 25% of future prospects have been granted while calculating the compensation when in fact the petitioner was a self employed driver of a Taxi cab and had better future prospects.

5. Further, the Loss of Income during the treatment has been calculated as Rs.98,808/- which is incorrect as he remained under treatment for a long time after the accident. The nominal sum of Rs.25,000/- has been granted towards Pain and Suffering, although the Appellant admittedly suffered 90% if physical impairment of his left lower limb.

6. The sum of Rs.1,27,895/- towards expenditure on treatment is also contrary to the record as about Rs.2 lakhs had been spent by the Appellant on his medical treatment. It is submitted that for the similar reasons, the amount of Rs.15,000/- towards Expenditure on Conveyance is much less and Rs.15,000/- towards Special Diet is also inadequate as the Appellant remained under treatment for a long time. The Attendant Charges have been granted in sum of Rs.18,000/- only, despite the fact that he had suffered 90% of Permanent Disability. An amount of Rs.50,000/- granted towards Disfiguration are also grossly inadequate. An amount of Rs.25,000/- granted towards Mental and Physical Shock are also not in consonance with

the sufferings of the Appellant. No compensation has been granted towards Loss of Expectation of Life Span on account of Disability. It is, therefore, submitted that the quantum of compensation granted by way of impugned Award is liable to be enhanced.

7. The *learned Counsel for the Insurance Company*, however, has contended that even though the Appellant has suffered 90% of disability of left lower limb, but considering the nature of disability there can be no inference that the Appellant would not be able to work in future. Therefore, the learned Tribunal has rightly assessed the disability as 45% of the whole body. Likewise, reasonable compensation has been awarded under all the heads, in the light of the evidence adduced on behalf of the Appellant. Though the Appellant had claimed that he was earning Rs.40,000/- per month, but aside from his testimony there was no evidence or supporting document to corroborate his assertions. It is submitted that the impugned Award is well reasoned and does not call for any interference.

8. **Submissions heard**.

9. The *first main contention* raised on behalf of the Appellant is in regard to *his monthly income.* He had deposed on affidavit that he was a Commercial Driver of Taxi Cab and was having an earning of Rs.40,000/- per month. However, admittedly, no independent evidence or even a Bank statement was filed to corroborate that his monthly income was Rs.40,000/- per month. The learned Presiding Officer has rightly taken a parameter of the wages of skilled worker which was Rs.16,468/- per month, as the income of the Appellant.

10. The *second aspect which is vehemently contended* is in regard to loss of earning capacity on account of permanent Disability suffered by him. The

Appellant has asserted that even though permanent disability was assessed as 90% of left lower limb, but in the light of his profession he has been rendered incapable of working as a commercial driver and thus, there had been a complete loss of earning capacity.

11. In the case of *Govind Yadav vs. New India Insurance Co. Ltd*. (2011) 10 SCC 683, the Supreme Court observed that if a victim of accident suffers permanent disability, then effort should be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning capacity and his inability to lead a normal life and enjoy the amenities, which he would have enjoyed but for the disability caused due to the accident.

12. The Court's approach in the cases of Compensation for injuries suffered in road accidents was explained in the case of *K. Suresh vs. New India Assurance Co. Ltd*. (2012) 12 SCC 274, wherein the Apex Court observed that while determining the quantum of compensation, one has to keep in view the suffering 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 the Court has to be broad based.

13. This aspect was considered in the case of *Raj Kumar vs. Ajay Kumar* (2011) 1 SCC 343, wherein the Apex Court had observed that the ascertainment of the effect of permanent disability on actual earning capacity, involves three steps. The *first* being to ascertain what activities the claimant could be able to do or not to do on account of permanent disability.

The second step is to ascertain his avocation, profession and nature of work before the accident and also his age. The *third step* is to find out (i) whether the claimant is totally disabled from earning any kind of livelihood or (ii) whether inspite of the permanent disability the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of functions so that he continue to earn his livelihood.

14. In the said case, example was given that if the left hand of the claimant is amputated, his permanent physical or functional disablement may be assessed around 60%. If, however, the claimant is a driver or a carpenter, the actual loss of earning capacity may virtually be hundred per cent, if he is neither able to drive or do carpentry. However, if the claimant is a clerk in government service, the loss of left hand may not result in loss of employment and he may continue to work as a clerk and in such an event loss of earning capacity would not be 100% as in the case of a driver or a carpenter, nor 60% is the actual physical disability, which may be much less. In fact, there may not be any need to award any compensation under the head of "Loss of Future Earnings", if the claimant continues to be in government service, though he may be awarded compensation for loss of amenities as a consequence of losing his hand. Sometimes, the injured claimant may be continued in service, but may not be found suitable for discharging the duties attached to the post or job which he may earlier holding and on account of his disability, may be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited Award given under the loss of earning capacity, taking note of

the reduced earning capacity.

15. In the above case, it was further observed 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 nominal amount may be awarded under these heads.

16. In the case of *Parminder Singh vs. New India Assurance Co. Ltd*. (2019) 7 SCC 217, while referring to the aforesaid judgment it was observed that having regard to the nature of injuries suffered by the Appellant, it was not possible for him to work either as a driver or as a manual labour or engage in any agricultural operations for his sustenance. The loss of functional ability taken as 100% was held to be rightly assessed.

17. The Co-ordinate Bench of this Court in *Sumer vs. National Ins. Co. Ltd. and Ors*. 2023 SCC OnLine Del 5533 in a similar situation where though the Disability Certificate certified that the Appellant had suffered 50% of permanent disability in relation to left upper and left lower limb and his sensory loss to the left upper and left lower limb, was assessed as 20% and his combined disability was assessed at 59% of the whole body, the permanent disability in relation to the whole body was considered as 100%.

18. Similarly, in the case of *National Insurance Co. Ltd. vs. Pawan Kmar and Ors*. 2023 SCC OnLine Del 4964 the Co-ordinate Bench took the functional disability as 100% even though the Disability Certificate has certified the Permanent Disability as 95% with respect to left upper limb and the right lower limb.

19. ***In the present case***, considering the nature of disability, even though it was 90% of the left lower limb, it is evident that the Appellant who was a

commercial Tax Driver, would not be able to resume his occupation and his Functional Disability is hereby assessed as 100%. With the functional disability as 100%, the **Loss of Future Income** is calculated as **Rs. 25,69,008** [(100% of 16,468) X 12 X 13].

20. The Appellant has also sought enhancement of the compensation given under the various heads. The Appellant has deposed in his evidence that he remained admitted in the Hospital intermittently from April, 2017 to July, 2018 for a total period of 76 days. Considering the nature of injury it can be reasonable estimated that he would have been visiting the hospital regularly for the period of about one year and four months. Considering the prolonged treatment and the nature of injury, the compensation granted under the following heads is accordingly enhanced :

Sr.No.	**Pecuniary Loss**	**Awarded by the Tribunal**	**Awarded by this Court**
(i)	Loss of Future Income	14,45,067/-	**Rs. 25,69,008**
(ii)	Expenditure on Treatment	1,27,895/-	1,27,895/- (Same being no treatment documents filed)
(iii)	Expenditure on Conveyance	15,000/-	25,000/-
(iv)	Expenditure on Special Diet	15,000/-	25,000/-
(v)	Cost of Nursing/Attendant	18,000 (3000X6) for 6 months	48,000/- (3000X16) for 16 months)
(vi)	Loss of Earning capacity	45% qua whole body	100%
(vii)	Loss of Income during treatment	98,808/- (16468X6)	98,808 (Same)
Non-Pecuniary Loss:			
(viii)	Compensation for Mental and Physical Shock	25,000/-	50,000/-
(ix)	Pain and Suffering	25,000/-	25,000/- (Same)

(x)	Disfiguration	50,000/-	50,000/- (Same)
TOTAL COMPENSATION		Rs.18,19,770/-	Rs. 30,18,711/-

21. In view of the above, the Appeal is allowed. The Respondent No.3 is directed to pay the enhanced compensation of Rs.30, 18,711/- to the petitioner within one month, failing which respondent No.3 would pay the interest @ 9% w.e.f. 01.11.2024, till realization. Interim amount, if any, paid to the petitioner be deducted from this amount.

22. It is also directed that the compensation be put in the FDR/ released in the same proportion as directed by the Tribunal. The Copy of the Award be forwarded to the Tribunal, for compliance. The Application for release of the compensation be henceforth, filed before the Ld. Tribunal.

23. The Appeal is accordingly disposed of along with the pending application, if any.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 30, 2024
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