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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 02 December, 2024*****MAC.APP. 101/2020, CM APPL. 7416/2020 (delay)****WAKIL KUMAR @ WAKIL DAS**Appellant

Through: Mr. Jatinder Karma, Advocate.

versus

1. **ARVIND BISWAKARMA**
S/O CHANDRASEKHAR BISWAKARMARespondent No.1
2. **SANJAY KUMAR SINGH**
S/O SH. YOGESHWAR SINGHRespondent No. 2
3. **ORIENTAL INSURANCE CO LTD**
THROUGH THE MANAGERRespondent No. 3
Through: Mr. R.K. Tripathi, Advocate for R3.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G E M E N T (Oral)****MAC.APP. 101/2020**

1. The Appeal under Section 173 of the *Motor Vehicles Act, 1988* ('M.V.Act' *hereinafter*) has been filed on behalf of the Injured/Claimant against the impugned Judgment dated 26.10.2018 to seek enhancement of compensation which is awarded to him in the sum of Rs.8,33,332/- along with interest @ 9% p.a. from 15.04.2010 till 18.09.2012.
2. The *enhancement of compensation* is sought on the following grounds:-



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- i. that the injured was 22 year old, working as helper of a truck. He suffered 90% of Permanent Disability of left upper limb but his Functional Disability has been taken as 50% ,when in fact it should have been taken as 100%;
- ii. that the compensation granted under *Non-Pecuniary Heads* is inadequate; and
- iii. that no compensation has been granted on account of Loss of Amenities of Life, Marriage Prospects, Attendant and Nursing Charges and Loss of Longevity of Life.

3. *Learned counsel on behalf of the Insurance Company* submits that the compensation has been granted, in accordance with law.

4. **Submissions heard.**

5. *Briefly stated*, on 11.07.2009 at about 4:30 PM, Appellant was sitting as helper, in the cabin of truck bearing no.HR-38K-8009, which was being driven by Mr. Arvind Biswakarma/Respondent No.1 in a rash and negligent manner It hit another stationary vehicle bearing No.UP-65R-8270 from back side, because of which the Appellant/Claimant sustained grievous injuries. The Appellant was removed to M. M. College Hospital, Gaya, Bihar from where he was referred to Gokul Hospital, Patna where he remained admitted from 11.07.2009 to 20.07.2009.

Functional Disability:

6. The *first ground* on which enhancement is sought, is that the Injured suffered 90% of Permanent Disability of left lower limb, but his Functional Disability has been taken as 50% when in fact it should have been taken as 100% given the nature of his job.



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7. PW2-Ms. Renu Jain, Statistical Assistant, Dr. BR Ambedkar Hospital, Delhi was examined by the Appellant before the Ld. Tribunal, who placed the Medical Disability Assessment record along with Permanent Disability Certificate whereby his permanent disability of left upper limb was taken as 90%.

8. Further, PW3-Dr. G.C. Verma, Member Disability Board of Dr. BR Ambedkar Hospital deposed that the injured would not be able to work ever with his left upper limb as he suffered 90% permanent physical disability in relation to his left upper limb and had amputation/disarticulation from the left shoulder of the upper limb. Consequently, the Ld. Tribunal held the functional disability to be 50% qua the whole body.

9. It is evident from the record that the Appellant was a helper on a truck which entails lifting, loading and unloading goods. **Therefore, in light of the facts and circumstances of the present case, the functional disability qua the whole body is modified to 80%. Therefore, his loss of future earnings on account of disability is calculated as Rs. 9,51,619.968/- (5,507.06/- x 12 x 18 x 80/100).**

Non Pecuniary Heads:

10. The *second ground* on which enhancement is sought is that Non-Pecuniary Heads is inadequate. Pertinently, the Ld. Tribunal has awarded sum of Rs. 15,000/- towards Compensation for *mental and physical shock*; Rs. 15,000/- towards compensation on account of *pain and suffering* and a sum of Rs. 50,000/- towards disfiguration.

11. Given the facts of the present case, the Injured/Appellant was of the young age of 22 years at the time of the accident. In light of the nature of



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injuries suffered by him, and also considering that it is an accident of 2009, *the compensation awarded towards Mental and physical shock is hereby enhanced to Rs. 50,000/- and the compensation towards Pain and suffering is also enhanced to Rs. 50,000/-.* *The Ld. Tribunal has rightly awarded Rs. 50,000/- towards disfiguration.*

Compensation towards Other Non-Pecuniary heads:

12. The *third ground* is that no amount is awarded towards *Loss of Amenities of Life, Marriage Prospects, Attendant and Nursing Charges and Loss of Longevity of Life.*

13. Pertinently, no evidence has been adduced by the Appellant/Injured showing that he incurred charges on *Attendant or a Nurse*. However, the Injured has suffered 90% of Permanent Disability of left upper limb which albeit life altering, he is definitely entitled to some attendant charges. *Considering his nature of work of the injured, a lumpsum amount of Rs. 2,50,000/- is awarded towards Attendant Charges.*

14. Further, he is a young unmarried person. **A sum of Rs. 75,000/- is awarded towards his loss of marriage prospects.**

15. **He is also awarded Rs. 50,000/- towards loss of amenities of life.**

Conclusion:

16. In light of the above, the Compensation amount is modified as hereinunder:

S. No.	Head	Awarded by Tribunal	Awarded by this Court
1.	Medical Expenses	Rs. 1,16,709/-	Rs. 1,16,709/-



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			(same)
2.	Disfigurement	Rs. 50,000/-	Rs. 50,000/- (same)
3.	Special Diets	Rs. 15,000/-	Rs. 15,000/- (same)
4.	Conveyance	Rs. 15,000/-	Rs. 15,000/- (same)
5.	Loss of Future earnings	Rs. 5,94,821/-	Rs.9,51,619.968/-
6.	Loss of earnings during treatment	Rs. 11,802/-	Rs. 11,802/-
7.	Pain and Suffering	Rs. 15,000/-	Rs. 50,000/-
8.	Mental and Physical Shock	Rs. 15,000/-	Rs. 50,000/-
9.	Loss of Amenities of Life	Nil	Rs. 50,000/-
10.	Attendant and Nursing Charges	Nil	Rs. 2,50,000/-
11.	Loss of Longevity of Life	Nil	Nil
11-A	Loss of Marriage Prospects	Nil	75,000/-
	Total	8,33,332/-	16,35,131/-

Relief:-

17. In view of the above, the Claimant is awarded total compensation of Rs. **16,35,131/-** 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 26.10.2018. The Insurance Company is directed to deposit the enhanced Awarded amount within 30days with the learned Tribunal.



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

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 2, 2024/RS