



2024:DHC:9721



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 11th December, 2024***+ **MAC.APP. 186/2024**

SMT RAJBALA

.....Appellant

Through: Mr. S.N. Parashar. Advocate.

versus

MUKESH CHAND & ANR.

.....Respondent

Through: Appearance not given.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****JUDGMENT (oral)**

1. An Appeal under Section 173 of the Motor Vehicle Act, 1988 has been filed on behalf of the *Appellant/Injured for enhancement of the Compensation* amount granted in the sum of Rs.13,35,323/- along with interest @ 8% per annum on account of injuries suffered in a road accident on 26.06.2017.

2. The *grounds* on which the enhancement is sought are:

- i. the Appellant suffered overall Permanent Physical Impairment to the extent of 59%, but the Functional Disability has been assessed as 35% which should have been taken at least equivalent to the Permanent Disability; and
- ii. that the compensation granted under the *Non-Pecuniary Heads* are required to be enhanced.



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3. *Learned counsel on behalf of the Appellant* has argued that the Functional Disability has been assessed without taking into account the neurological deficiency and it needs to be re-assessed.
4. *Learned counsel on behalf of the Insurance Company* submits that considering the nature of disability, which is essentially of right upper limb and there being no proof of Appellant being employed, the Functional Disability has been rightly assessed according to the *Workmen's Compensation Act, 1923*, and does not merit any interference.
5. **Submissions heard.**
6. *Briefly stated*, on 26.06.2017 Shri Om Prakash (since deceased) along with his wife Smt. Rajbala, two sons, Shri Sachin Kumar and Shri Nepal Singh Koli and daughter-in-law Manisha, was travelling from Saharanpur to Delhi, in a car bearing No. DL8CAP-3345. When they reached at Khatauli Bypass, a Bus bearing No. UP11AT-0097 which was being driven by its driver/Respondent No.1 at a very high speed and in a rash and negligent manner, came from behind and hit their car, as a result of which all the occupants of the car including the Appellant, received serious injuries. They were taken to Civil Hospital, Khatauli, Muzaffarnagar and then to SDS Global Hospital, Modipuram, Meerut for treatment.
7. *FIR No.784/2017* under Sections 279/338/427 IPC, 1860 was registered at P.S. Khatauli.
8. The Appellant filed a Claim Petition seeking compensation on account of the injuries suffered by her in the said road accident. The learned Tribunal *vide* Award dated 16.08.2023 granted a compensation in the sum of Rs.14,43,275/- along with interest @ 8% per annum to the Appellant herein. Aggrieved by the impugned Award, the present Appeal has been filed for



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enhancement of compensation.

Enhancement in Functional Disability: -

9. The *main ground* on which the enhancement is sought is on account of the Functional Disability. PW-6/Dr. I.K. Dhammi, Consultant, Department of Orthopedics, GTB Hospital, Delhi had proved the Disability Certificate Ex.PW6/1, wherein it has been specified that the Appellant suffered 17% Permanent Disability in relation to her right upper limb and 52% Permanent Disability in relation to Neurology. She suffered overall Permanent Impairment to the extent of 59%. The learned Tribunal considering the nature of disability assessed as *Functional Disability of 35%*.

10. Though, it has been found that the Appellant was a housewife and was not taking tuitions as was claimed by her, but it cannot be overlooked that being a housewife, she is required to do specialized work of taking care of the household work. Considering that she has 52% permanent disability in relation to neurology and overall Functional Disability of 59%, **it is hereby held that the Functional Disability should have been taken as 59% which is the Permanent Disability assessed by the Doctor.**

11. Consequently, the **Loss of Future Earnings Due to Disability** is recalculated and **Rs. 11,54,275/-** [59% of (16,468 X110/100X9X12)] is awarded to the Appellant.

Non-Pecuniary Heads: -

12. The compensation under the *Non-Pecuniary Heads* has been assessed correctly and does not warrant any interference.



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**Conclusion :-**

13. The compensation awarded to the Appellant is summarized as under:-

Sr. No.	Head of Compensation	Amount awarded by the Tribunal	Amount awarded/revised by this Court
1.	Medical Expenses	1,42,968/-	1,42,968/- (Same)
2.	Loss of Earning	1,97,616/-	1,97,616/- (Same)
3.	Loss of Future Earnings	6,84,739/-	11,54,275/-
4.	Special Diet	40,000/-	40,000/- (Same)
5.	Conveyance Charges	35,000/-	35,000/- (Same)
6.	Attendant Charges	35,000/-	35,000/- (Same)
7.	Pain & Sufferings	1,00,000/-	1,00,000/- (Same)
8.	Loss of Amenities	1,00,000/-	1,00,000/- (Same)
TOTAL COMPENSATION		Rs.13,53,323/-	Rs.18,04,859/-

14. Thus, total compensation awarded to the Appellant comes to Rs.18,04,859/- along with interest @8% per annum, which be deposited before the Tribunal within four weeks and be disbursed as per the terms of the Award dated 16.08.2023.

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

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 11, 2024

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