



2024:DHC:9761



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 11<sup>th</sup> December, 2024***+ **MAC.APP. 188/2024**

MANISHA

.....Appellant

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

versus

MUKESH CHAND &amp; 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.17,22,124/- 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. that the Appellant suffered 48% permanent physical impairment in relation to right upper limb as well as with respect to neurology, which has been assessed as 30% Permanent Disability in relation to whole body and *Functional Disability* should have been taken at least, equivalent to the Permanent Disability;



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- ii. that the compensation granted under the *Non-Pecuniary Heads* needs to be enhanced.
3. *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 and does not merit any interference*. Moreover, the Functional Disability has been assessed according to the *Workman Compensation Act*, which in fact does not take into account any kind of disability on account of neurological deficiency.
4. **Submissions heard.**
5. *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 and 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.
6. The *FIR No.784/2017* under Sections 279/338/427 IPC was registered at P.S. Khatauli.
7. The Appellant filed a Claim Petition seeking compensation on account of the injuries suffered by her in the said road accident.
8. The learned Tribunal vide Award dated 16.08.2023 granted a compensation in the sum of Rs.17,22,124/- along with interest @ 8% per



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annum to the Appellant herein. Aggrieved by the impugned Award, the present Appeal has been filed for 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 of the Appellant Manisha, where in it has been specified that the Appellant suffered 48% permanent physical impairment in relation to right upper limb as well as with respect to Neurology. She suffered overall Permanent Impairment to the extent of 48%. The learned Tribunal considering the nature of disability assessed it as Functional Disability of 30%.

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.

11. Considering that she has suffered 48% permanent disability, it is hereby held that the Functional Disability should have been taken at least as **48% which is the Permanent Disability assessed by the Doctor.** Consequently, the **Loss of Future Earnings Due to Disability** is recalculated and comes to **Rs. 22,57,565/-** (48% of (16,468 X 140/100X17X12), awarded to the Appellant.

**Non-Pecuniary Heads: -**

12. The compensation under the non-pecuniary heads has been assessed correctly and do not warrant any interference.

**Conclusion: -**



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13. The enhanced 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                  | 1,13,210/-                     | 1,13,210/-Same                       |
| 2.                        | Special Diet & Conveyance Charges | 50,000/-                       | 50,000/-                             |
| 3.                        | Attendant Charges                 | 15,000/-                       | 15,000/-                             |
| 4.                        | Loss of Earning                   | 32,936/-                       | 32,936/-                             |
| 5.                        | <b>Loss of Future Earnings</b>    | 14,10,978/-                    | <b>22,57,565/-</b>                   |
| 6.                        | Pain & Sufferings                 | 50,000/-                       | 50,000/- Same                        |
| 7.                        | Loss of Amenities                 | 50,000/-                       | 50,000/- Same                        |
| <b>TOTAL COMPENSATION</b> |                                   | <b>Rs.17,22,124/-</b>          | <b>Rs.25,68,711/-</b>                |

14. Thus, total enhanced compensation awarded to the Appellant is *Rs.25,68,711/- along with interest @8% per annum* to be deposited by the Insurance Company within Four weeks. The compensation amount be disbursed in terms of the impugned 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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