



2024:DHC:9719



\$~30

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

%

Date of decision: 12th December, 2024

+

MAC.APP. 358/2023

SUMIT KUMAR JHA

.....Appellant

Through: Mr. Bijay Kumar, Advocate.

versus

1. Uma Shankar S/o Sh. Kalika Singh
R/o H.No. D-5, Harswaroop Colony,
Fatehpur Beri, New Delhi Respondent No.1.
2. Dharam Dev S/o Mukh Ram Sharma,
R/o H. No. 208, Bhopa Mohalla,
Fatehpur Beri, New Delhi Respondent No.2.
03. Kotak Mahindra General Insurance Co. Ltd.
H-78, 7th Floor, 23 Himalaya House,
K. G. Marg, New Delhi. Respondent No.3.
Through: Mr. Ved Vyas Tripathi and Mr.
Vaibhav Verma, Advocates for
Insurance company.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. The Appeal under *Section 173* of the *Motor Vehicles Act, 1988* has been filed on behalf of *Appellant Sumit Kumar Jha, injured* seeking *enhancement of compensation* granted to him in the sum of Rs.12,39,973/- along with interest @ 7% per annum on account of accident which took place on 17.07.2020.
2. The enhancement of compensation has been sought on the following grounds:-

- (i) that the Minimum Wages for unskilled worker has been



2024:DHC:9719



- taken which should have been for skilled worker in the sum of Rs.18,563/- as he was a Painter by profession; and
- (ii) that the Permanent Disability was to the extent of 46%,but considering his nature of Permanent Disability and also that he underwent Hip Replacement, it should have been taken as 46% instead of 23%;
 - (iii) that the enhanced compensation be given for loss of Income for two years instead of four months, as the treatment continued till 2022;
 - (iv) that the compensation granted under Non Pecuniary Heads needs to be enhanced; and
 - (v) that the rate of interest needs to be enhanced from 7% to 9% per annum.

3. *Learned counsel on behalf of the Insurance Company* has submitted that there is no proof of the injured being a Painter by profession. The learned Tribunal has rightly taken the income as of an unskilled worker. In so far as the compensation under other heads is concerned, the same may be considered in accordance with law.

4. **Submissions Heard.**

5. ***Briefly stated***, on 17.07.2020 at about 5 PM when the injured, Sumit Kumar Jha was near Bandh Road near 3rd Avenue, a water tanker bearing No.DL-1LT-6897 which was being driven in a rash and negligent manner by its driver, Uma Shankar hit him from the front side because of which he fell and became unconscious. He was shifted to the hospital for treatment where his MLC was prepared. The *FIR No.275/2020 under Section 279/337 IPC at P.S. Fatehpur Beri, dated 17.07.2020*, was



2024:DHC:9719



registered. After investigation, Chargesheet was filed against the Driver of the offending vehicle.

6. The *Detailed Accident Report* was filed before the Tribunal. The learned Tribunal after assessing the evidence granted compensation in the sum of Rs.12,39,973/- along with interest @ 7% per annum.

Rate of Wages of the Injured:

7. The *first ground* on which the enhancement is being sought is that the injured was a Painter by profession and thereby **the Minimum Wages should have been taken as per skilled worker.**

8. The injured as PW-1, deposed that he was a Painter by profession. The Insurance Company had merely given a suggestion that he was not a Painter by profession. It is a known fact that the Petitioner belonged to an unorganised Sector and it is unlikely that there would be any documentary proof of he being a Painter. To require from him to produce any documentary evidence, may not be feasible. The Insurance Company on the other hand, has not led any evidence to rebut that he was not a Painter by profession nor has it done any confirmation of the profession of the injured. Considering the evidence produced by the Appellant, there is no reason to disbelieve his testimony and he is held to be a skilled worker being a Painter by profession. ***The Minimum Wages are revised from that of an unskilled worker to that of a skilled worker at Rs.18,563/- per month.***

Loss of Earnings:

9. The *second ground* of challenge is that loss of income has been given for four months when he remained under treatment for two years.

10. As per the Discharge Summary, he was admitted in the hospital on



2024:DHC:9719



17.07.2020 and was discharged on 05.08.2020. He was diagnosed of *Dai with Fracture Neck of Femur*. The treatment given was conservative and thereafter, he was discharged with medication recommended for five days.

11. The injured was again admitted in *Madan Mohan Malviya Hospital* on 06.05.2022 and discharged on 11.05.2022 with the diagnosis of Old Neglected (L) NOF and was operated for total *Hip Replacement*.

12. From the medical record placed on record, it is evident that the injured remained under treatment initially in 2020 but because of subsequent complications, he was again operated for Hip Replacement. Considering the nature of injuries and the treatment record, it can be reasonably assessed that he would have remained under treatment initially for three months and again for about four months in 2022. ***The total period of treatment is assessed for about seven months.***

13. The ***compensation for loss of Income is recalculated for seven months at Rs.18,563/- which comes to Rs.1,29,941/-.***

Loss of Functional Disability:

14. The *third ground* on which enhancement is sought is that Permanent Disability suffered by the injured is 46% but the Functional Disability has been taken as 23%. From the testimony of the Petitioner as well as his Medical Record, it cannot be made out what exactly is the functional difficulty the injured is suffering in pursuing his work. ***In the absence of any cogent evidence of the extent of handicap in his profession, the learned Tribunal has rightly taken the Functional Disability as 23% which does not merit any interference.***

Loss of Future Income:



2024:DHC:9719



15. The loss of *future income* will have to be recalculated on the enhanced sum, which is as under: -

Rs.18,563/- X 140/100 X 12 X 17 X 23/100 = Rs.12,19,366.34/-

Enhancement of Compensation under Non Pecuniary Heads:

16. The enhancement of compensation has also been sought under Non Pecuniary Heads.

17. The compensation on the ground of treatment has been given as Rs.3050/-. The Appellant may have got his treatment in a Government Hospital firstly at AIIMS and thereafter, at Madan Mohan Malviya Hospital but considering the extent of injury which ultimately resulted in hip replacement, the Appellant may not have been able to produce the medical bills or may have incurred other expenses on his medicine. ***The expenditure for Medical Expenses, is hereby enhanced to Rs.20,000/-.***

18. The expenditure on *Special Diet, Conveyance and Attendant* has been comprehensively awarded in the sum of Rs.70,000/-. Considering that after the accident in the year 2020, he continued to face difficulty and ultimately had to undergo hip replacement surgery in 2022, the compensation under the head of ***Conveyance is granted for Rs.35,000/-; Special Diet for Rs.35,000/-*** and lumpsum ***Attendant charges are granted for seven months for Rs.52,500/- @ Rs.7,500/- p.m..***

19. The compensation for ***Pain and Suffering and enjoyment of life has been given as Rs.1,00,000/- which is enhanced to Rs.2 lakhs.***

20. ***He is granted Rs.75,000/- on account of Loss of Amenities and for dis-figuration and marriage prospects as Rs.1,00,000/- each.***

21. ***The total compensation under Non Pecuniary Heads is enhanced to Rs.4,75,000/-***



2024:DHC:9719

**Rate of Interest:**

22. The accident took place on 17.07.2020. *The rate of interest is enhanced from 7% to 9% per annum* from the date of filing of the Claim Petition till the amount is deposited by the Insurance Company.

23. The compensation is, therefore, recalculated as under:-

S. No.	Heads	Awarded by the Tribunal	Awarded by this Court
Pecuniary Heads			
	Expenditure on Treatment	Rs. 3,050/-	Rs.20,000/-
	ii. Expenditure on Conveyance	Rs.70,000/-	Rs.35,000/-
	iii. Expenditure on Special Diet		Rs.35,000/-
	iv. Cost of Attendant		Rs.52,500/-
	v. Loss of Income	Rs.61,240/-	Rs. 1,29,941/-
	vi. Any other Loss	NIL	NIL
Non-pecuniary Loss			
2.	i. Mental and Physical Shock	----	-----
	ii. Pain and Suffering including Shock	Rs.1,00,000/-	Rs,2,00,000/-
	iii. Loss of amenities of Life	NIL	Rs.75,000/-
	iv. Dis-figuration	NIL	Rs.1,00,000/-
	v. Loss of Marriage Prospects	NIL	Rs.1,00,000/-



2024:DHC:9719



	vi.	Loss of earning, inconvenience, hardships, dejection etc.	NIL	NIL
Disability resulting in loss of earning capacity				
3.	i.	Percentage of Disability	46%	46%
	ii.	Loss of amenities	NIL	NIL
	iii.	Loss of earning capacity	23%	23%
	iv.	Loss of future income (Income X %Earning Capacity X Multiplier)	Rs.10,05,683/-	Rs.12,19,366.34/-
	TOTAL COMPENSATION		Rs.12,39,973/-	Rs.19,70,000/- (rounded off)

Relief: -

24. In view of the above, the Claimant is awarded total compensation of **Rs.19,70,000/-** along with interest @9% per annum from the date of filing of the petition till realization, to be disbursed in terms of the Award dated 03.01.2023. The Insurance Company is directed to deposit the enhanced Awarded amount within 30 days with the learned Tribunal.

25. With aforesaid directions, the Appeal is accordingly disposed of.

(NEENA BANSAL KRISHNA)
JUDGE



2024:DHC:9719



DECEMBER 12, 2024/rk

Signature Not Verified

Digitally Signed
By: VIKAS AKORA
Signing Date: 16.12.2024
18:15:00

MAC.APP.358/2023