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

% ***Date of decision: 13th November, 2024***

+ **MAC.APP. 131/2022**

DEEPAK

.....Appellant

Through: Counsel for Appellant (appearance
not given)

versus

SATYA & ORS.

.....Respondents

Through: Mr. Danish Aftab Chowdhury and
Mr. Suhail Malik, Advocates for R3.

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* ('M.V.Act' *hereinafter*) has been filed on behalf of the Appellant/Claimant, who has sought enhancement of compensation, which has been granted in the sum of Rs. 31,03,151/- along with the interest @ 9% p.a.
2. *Learned counsel on behalf of the Insurance Company*, submits that the Insurance Company is willing for a settlement, however, learned counsel for the Claimant has no intimation for settlement and seeks adjudication on merits.
3. *Learned counsel on behalf of the Claimants* has sought enhancement of compensation on the ground that the income of the injured should have been taken to be Rs.15,000/- or at least Rs.10,374/- per month, which was



the prevailing minimum wages for a matriculate, in the light of the testimony of PW-4, Mr. Jugnu Dhawan who had deposed that his workshop used to remain open for all the seven days in a week. The injured was working as a car mechanic and was getting Rs.500/- per day, which comes to Rs.15,000/- per month. Moreover, the provisional Matriculation Certificate, Ex.PW-1/4 of the injured, has also been proved.

4. The *second ground of challenge* is that the Petitioner has suffered 60% of Physical and Neurological Disability, which is permanent. In view of the testimony of PW-3, Dr. L.N. Gupta, the Functional Disability should have been assessed as 100% and not 60% , as has been taken by the learned Tribunal.

5. **Submissions heard.**

6. **Briefly stated**, on 09.07.2014 at about 10:30 pm, the Appellant/injured was driving his scooty bearing registration No. DL-13S-TC-0097 with his friend, Mr. Gajender Pal Singh on pillion seat. As their scooty just passed below the Railway Bridge on Bhairo Marg diverting towards Sarail Kale Khan, his scooty was hit from behind by offending bearing Car HR-55S-4948, which was being driven by the Respondent No. 1, Mr. Satya, at a fast speed and in a rash and negligent manner. He as well as his friend suffered injuries and were taken to RML Hospital in the PCR. FIR No. 242/14 under Sections 279/337 of the Indian Penal Code, 1860 (*hereinafter referred to as 'IPC'*) was registered at Police Station Tilak Marg, in regard to the accident. Two detailed Accident Reports (DARs) bearing numbers D-438/14 and D-439/14 were filed in respect of the Appellant and his friend, Mr. Mr. Gajender Pal Singh respectively.

7. The **learned Tribunal** considered the grant of compensation under



various heads and granted a total compensation of Rs.47,71,200/- along with the interest @9% p.a., from the date of filing of DARs till the deposit of the amount, within 30 days.

8. The *first main grievance* of the Claimants, is that PW-4, Mr. Jugnu Dhawan had deposed that the injured was working with him as a car mechanic and was getting a salary of Rs.500/- per day which comes to Rs.15,000/- per month. In the alternative, the provisional Matriculation Certificate, Ex.PW1/4, has been proved according to which the minimum wages for matriculate is Rs.10,374/-. The learned Tribunal thus, fell in error in taking the salary of the injured as Rs.9,802/- per month for a non-matriculate.

9. The Appellant/Claimant in his testimony as PW-1, had deposed that he was working as an electrician in two shops of car Accessories, namely M/s Kar Kool, Exclusive Range of Car Accessories at 12-13, R.K. Ashram Marg, new Delhii and M/s Car Aids, 5-7, R.K. Ashram Marg, New Delhi and was earning Rs.50,000/- per month.

10. To substantiate his Claim, he examined PW-4, Mr. Jugnu Dhawan, who was the proprietor of M/s Kar Kool and who deposed that his father is a proprietor of othe other shop in the name of M/s Car Aids. He corroborated the testimony of the Plaintiff and deposed that he was getting a payment of Rs.500/- per day.

11. However, the learned Tribunal disbelieved his testimony by observing that no documents showing the involvement or the earnings of the Appellant or that the Appellant was qualified to work as an electrician or has undergone specialized training in this regard. Furthermore, the payment of Rs.500/- per day, as alleged to be made to the Appellant in cash, was



disbelieved in the absence of there being any satisfactory evidence. The daily earning of the Appellant as Rs.500/-, has been rightly disbelieved by the learned Tribunal.

12. The Appellant proved his Provisional Certificate for passing Secondary School Examination from National Institute of Open School, which is Ex.PW-1/4. His salary has been taken for a matriculate as Rs.9,802/- per month.

13. The only grievance of the Appellant, is that instead of taking the minimum wages for unskilled worker, it should have been taken for skilled worker as Rs.10,734/- per month as he was doing skilled job.

14. This argument of the Appellant is not tenable as there is clear finding of the Tribunal that he had not been able to produce any Certificate or specialized training in being a car mechanic. He may have been working at a car shop but there is nothing to prove that he was doing any skilled work. Merely because he was working on a car shop, does not imply that he was a skilled worker entitled to the Minimum Wages for the skilled worker. The learned Tribunal has rightly calculated the salary of the Appellant, as Rs.9,802/- per month, for an unskilled worker. There is no infirmity in this regard and the actual earnings have rightly granted for two years, in the sum of Rs.2,35,248/- and do not warrant any interference.

15. The **second ground of challenge is Loss of Future Earnings** due to disability. The Appellant has relied upon his Disability Permanent Certificate bearing F.No. Addl. M.S. (PK) CMB-0)/2017/RMLH, Ex.PW-3/1 *vide* which it has been certified by the Medical Board that “*the patient has about 60% permanent physical and mental disability at present in relation to his whole body, which is likely to be permanent*”.



16. To prove the physical disability, PW-3, Dr. L.N. Gupta (Professor), M.S. (Surgery), M. CH.(Neuro), PGD (DP & R), Consultant & H.O.D. Neurosurgery, Dr. RML Hospital, New Delhi, was examined, who deposed that *“he had operated the patient for head injury resulting into left side facial weakness with sensory loss ad left hemiparesis like minimum paralysis and the patient has obtained moderate dysfunction in memory.”*

17. The Medical Board comprised of three Members including himself, Dr. Yawar Shoaib Ali, Assistant Professor, Neurosurgery and Dr. Amit Dagar, Assistant Professor, Neurosurgery. He further clarified that the Disability Certificate, Ex.PW-3/1 bears only his signatures as before the signing of the Disability Certificate, the tenure of the aforesaid two doctors, got over. The physical and mental disability was determined by the Medical Board, to the extent of 60% with respect to the whole body as on date the above disability is permanent. He volunteered that though, earlier it was opined that the injury was likely to be permanent but after three years, he has now deposed that it has become permanent. He further volunteered that with rehabilitation training, he can learn to do his day-to-day activities on his own, but was unable to say if he could travel in public transport or whether he required an attendant for day-to-day functioning for his entire life. He also deposed that with the disability, he cannot work as a car mechanic or ever do any kind of skilled job or work involving application of mind.

18. PW-3 was extensively examined on behalf of the Respondent No. 2, Mr. Sunil Kumar, proprietor of *M/s Sunworld Travel* (Owner) wherein he clarified that the injured was treated in his hospital under his direct supervision as he was the Head of the Department as well as Head of Unit



Neurosurgery-I, at the relevant time. The witness also identified the signatures of Dr. Zambre Sourabh Mukund, who had signed the Discharge Summary being the senior resident in the Department. Furthermore, in the Court query, PW-3 had specifically stated that the above disability suffered by the Appellant, was possible as a result of injury suffered by him in the accident and as reflected in the Discharge Summary and other medical papers.

19. The learned Tribunal considered the Medical Disability Certificate, Ex.PW-3/1 and took the functional disability as 30%. However, there are documents/evidence on record especially that of PW-3, Dr. L.N. Gupta, which has established that the Appellant has suffered neurological disability, which is permanent and has been rendered incapable of taking up any job involving the skill or the mind activity.

20. In the case of Raj Kumar vs. Ajay Kumar & Anr., (2011) 1 SCC 343, it has been held that where the Permanent Disability is of the kind, which prevents a person for taking up his job, it should be calculated as 100% functional disability. Similar observations have been made in the Judgment of Jithendran vs. The New India Assurance Co. Ltd Anr., Civil Appeal No. 6494/2021.

21. In the present case, the learned Tribunal, therefore, erred in taking the Functional Disability as 30%, when in fact it should have been taken as 100%. **His functional disability is taken as 100%.** The Appellant has been rightly held entitled to 40% towards the Future Prospects in the light of the Judgment of this Court in Bajaj Alliance Gen. Insurance Co. Ltd. vs. Rajeshwar Prasad & Ors., MACA 858/15, decided on 19.07.2017 and Faiyaz Ahmad Khan vs. Chandra Pal Singh & Ors, MACA No. 351/17,



decided on 08.08.2017.

22. **Loss of Future Earnings and Prospects**, is thus re-calculated as under:-

Annual Income: Rs.9,802/- + Rs.3,920/- (40% of Rs.9,802/-), which is equal to Rs.13,722/-p.a. .

Loss of Future Earnings and Prospects: Rs. 13,722/- X 12 X 18 is calculated to 29,63,952/-.

23. The Petitioner has also claimed the **Attendant Charges** for his lifetime. The learned Tribunal referred to the testimony of PW-3 who had deposed that the Petitioner at the time of the treatment, was not in a position to even do his day-to-day activities, though he could not state about the future. *The learned Tribunal has therefore, rightly granted a lumpsum of Rs.2,00,000/-, towards the Attendant Charges, which does not warrant any interference.*

24. **Conclusion:**

The Award is accordingly modified as under:-

Sl.No.	Heads	Compensation granted by the Tribunal	Compensation granted/enhanced by this Court
11.	Pecuniary Loss		
(i)	Expenditure on treatment	Rs.64,428.00	Same
(ii)	Expenditure on conveyance	Rs.50,000.00	Same
(iii)	Expenditure on special diet	Rs.25,000.00	Same
(iv)	Cost of nursing/attendant	Rs.2,00,000.00	Same
(v)	Loss of earning capacity	NIL	Same



(vi)	Loss of income	Rs.2,35,248/-	Same
(vii)	Any other loss which may require any special treatment or aid to the injured for the rest of this life	NIL	Same
12.	Non-pecuniary Loss:		
(i)	Compensation for mental and physical shock	Rs.1,00,000.00	Same
(ii)	Pain and suffering	Rs.1,00,000.00	Same
(iii)	Loss of amenities of life	Rs.50,000.00	Same
(iv)	Disfiguration	NIL	Same
(v)	Loss of marriage prospects	Rs.5,00,000.00	Same
(vi)	Loss of earning, inconvenience, hardships, disappointment, frustration, mental stress, dejection and unhappiness in future life etc.	NIL	Same
13.	Disability resulting in loss of earning capacity		
(i)	Percentage of disability assessed and nature of disability as permanent or	60% permanent physical and mental disability respect to his whole body	Same



	temporary		
(ii)	Loss of amenities or loss of expectation of life span on account of disability	NA	
(iii)	Percentage of loss of earning relation to disability	60% functional disability i.e. equivalent to percentage of permanent disability	Same
(iv)	Loss of future income	Rs.17,78,475.00	Rs.29,63,952.00
4.	Total Compensation	Rs.31,03,151.00 (including the amount of interim award)	Rs. 42,88,628.00 (Rounded of to 42,90,628.00)

Thus, the total amount of compensation is hereby enhanced to Rs. 42,88,628.00, along with interest @9% per annum from the date of claim till disbursal, as per the terms of the Award dated 29.10.2020.

25. The Appeal is disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 13, 2024/RS