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

% ***Date of decision:14th November, 2024***

\+ **MAC.APP. 392/2022**

NATIONAL INSURANCE COMPANY LIMITED

.....Appellant

Through: Mr. Manoj Bhandari, Advocate.

versus

DUNI CHAND & ORS.

.....Respondent

Through: Mr. Krishan Kumar, Mr. Seemant K. Garg, Mr. Nitin Pal, Advocates for the Applicant Bank in I.A. No. 656 / 2024.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT ***(oral)***

1. *An Appeal* has been preferred by the *Appellant/Insurance Company u/s 173 of the Motor Vehicles Act, 1988* against the *Award dated 01.09.2022*, wherein the compensation in the sum of Rs.20,53.043/-along with interest @6 %, has been granted to the injured/Duni Chand on account of Injuries suffered by him, in a road accident on 12.11.2013.

2. *The Insurance Company has challenged the* quantum of compensation on two accounts:

(i) that the *Glacier allowance* has been granted, even though admittedly the Claimant never got posted to Siachin Glacier. Rs.9,52,800/- thus granted to him are liable to be revised; and

(ii) the *Loss of Future Earning Capacity* have been wrongly awarded by assessing the *Functional Disability* as 30% on the basis of the *Permanent Disability* of 30% when it should have been taken as 15% functional disability.

3. It is, therefore, submitted that the quantum of compensation is liable to be revised.

4. **CM APPL.No.35139/2023: Cross Objections** under **Order 41 Rule 22 CPC read with Section 173 of the Motor Vehicle Act,** wherein **the injured** has sought enhancement of Compensation on following accounts:-

i. the *Claimant was made to retire from the services in 2020; but for the injuries, he could have continued in service for next 8 years.* He is entitled to entire salary for the next 8 years minus the pension that he has received;

ii. the Claimant suffered 30% Permanent Disability and his Future Prospects should be granted by taking the disability as 30%.

iii. one daughter Attisha Thakur who was born on 06.11.2008, was studying in Class Seventh at the time of retirement of Claimant on 31.10.2020. As per Office Memorandum of Government of India dated 16.07.2018, the applicant is entitled to reimbursement of Child Education Allowance @ Rs.2250/- per month for the child;

iv. the compensation under the various *Non-Pecuniary Heads* is on the lower side; and

v. the interest has been granted @6 % which should be enhanced to 9% p.a.

5. **Submissions heard and record perused**.

6. *Briefly stated,* on 12.11.2013 at about 12:00 noon the injured Duni Chand was going on his bicycle towards Parade Ground from Base Hospital, when he was hit on the back side, by the Offending Vehicle i.e. Mini Bus bearing Registration No. DL-1VA-9298 because of which he sustained grievous injuries. *FIR No.389/2013* under Section 279/338 IPC, 1806 was registered.

7. The Petitioner claimed compensation under Section 166 read with Section 140 Motor Vehicle Act, 1988.

8. The learned Tribunal awarded a compensation in the *sum of Rs.28,01,500/- along with interest @6% per annum from the date of filing of DAR* (Detailed Accident Report) till deposit in 30 days.

<u>Siachen Glacier Allowance: -</u>

9. The *first aspect of grievance* of the Insurance Company is grant of *Risk Allowance/Glacier Allowance* in the sum of Rs.9,52,800/-.

10. The Petitioner/Claimant in his affidavit *Ex.PW3/A* had deposed that he had a total service period of 32 years in the Army, but would be able to work only for 24 years because he was put in permanent *Low Medical Category*. Had he been able to work for 32 years, he would have become entitled to three promotions up to the rank of Subedar Major, but would now retire in October, 2020.

11. He further deposed that after the retirement, he would have got a Civil job, but because of the restrictions in handling firearm, etc. as imposed by the Medical Board, he would not be able to get any civil job after his retirement. He further deposed that apart from the salary, *he was entitled to Glacier Allowance for a sum of Rs.39,700/- per month. He explained that*

his Battalion was posted in Siachen Glacier w.e.f. 18.04.2017 for a minimum period of two years which may extend further by two years as per Army rules. However, due of the injuries suffered by him and he being put in *Low Medical Category*, he was not allowed to be posted in Siachen Glacier along with his Battalion.

12. To corroborate his deposition, he examined *PW2/Havaldar Varinder* Singh who deposed that 7 Dogra Battalion was deployed in Siachen Glacier w.e.f 18.04.2017 for a period of two years, as per Army rules. *He corroborated that a sum of Rs.39,700/- per month is payable on account of Siachen Glacier allowance. He also deposed that had the Petitioner not met with an accident, he would have also got this posting along with the Battalion. He produced the Certificate dated 05.01.2018 Ex.PW2/15 in this regard.*

13. In his cross-examination, PW2/Havaldar Varinder Singh clarified that *Risk Allowance* is not payable to Army men who are working in Plains.

14. Thus, the learned Tribunal relying on the testimony of Petitioner and PW2, concluded that the Petitioner lost the opportunity of being posted in Siachen Glacier for a period of two years w.e.f. 18.04.2017 and thus, lost the Risk Allowance of Rs.39,700/- per month for a period of two years**.** ***A sum of Rs.9,52,800/- (39700 X 24) was accordingly granted.***

15. *The only grievance* of the Insurance Company is that since the Petitioner did not get posted to Siachen Glacier, he did not perform the high risk duty and therefore, cannot claim the benefit of High Risk Allowance.

16. The submissions made on behalf of the Insurance company is not tenable since it is an opportunity missed by the Claimant only on account of the injuries sustained by him. He otherwise would have gone for the posting

along with the entire Battalion to Siachen Glacier, which would have entitled him to the High-Risk Allowance totaling to Rs.9,52,800/-. ***There is no infirmity in grant of the High-Risk Allowance to the Petitioner and does not warrant any interference.***

Loss of Future salary/ Future Prospects/ Functional Disability:

17. *Now, coming to the Loss of Salary caused by the Permanent Disability for the remaining life post-retirement, shall be calculated.*

Percentage of Functional Disability:-

18. The *next ground* on which the Award has been challenged by the Insurance Company is that the future earnings have been wrongly awarded by taking Functional Disability as 30% for 8 years, when the same should have been 15%.

19. On the other hand, the Claimant in the objections, has asserted that his Permanent Disability for the purpose of future prospects, must be taken as 30%.

20. It is pertinent to observe that the Permanent Disability suffered by the Claimant was 30%. As per the testimony of *PW2/Havaldar Varinder Singh*, as per the proceedings of the Medical Board dated 14.07.2020 Ex.PW3/5, his medical category was converted into S1H1A1-P-3 (T-24) E-1 and he was permanently restricted from detailing on duty near source of fire/water point, moving machinery, not to drive, swimming and was even prohibited from handling Firearm and further restricted from PPG (PT Physical Training Parade Game) and night duties.

21. The Petitioner in his additional Affidavit, had also produced his Medical Board proceedings dated 14.07.2020 *Ex.PW3/5,* wherein it was

certified that his Permanent Low Medical Category remained the same. He further claimed that as per the Discharge Book issued by the Indian Army *Exc.PW3/6,* he was unable to get any further job.

22. What over and above is being claimed by him is his future prospects of getting another employment, the Claimant had argued that the Ld. Tribunal should have assessed the functional disability as 100% and not 30%.

23. From the proceedings of the Medical Board and the Discharge Book, it is evident that the Claimant may not have been able to get any re-employment in the Military services. However, there is no evidence adduced by the Petitioner to prove that he because of his low medical category was unable to secure any job after his retirement. He may not have been able to get certain jobs, but there is nothing to prove that he was rendered totally incapable of doing any job. Even the Disability Certificate on which reliance has been placed, while limiting his nature of employment, but does not anywhere reflect that he cannot take up any civil job in a private Agency.

24. ***Thus, the Tribunal has rightly assessed his functional disability as 30% and the same warrants no interference.***

Addition towards Future prospects:-

25. Further, in light of *National Insurance Co. Ltd vs Pranay Sethi***,** AIR 2017 SC 5157, he would be entitled to an addition of 40% in his Income towards future prospects as he was below 40 years of age on the date of the accident.

Loss of Future Income: -

26. The injured has asserted that because his tenure of service was cut short by 8 years, he should be granted entire salary for the next 8 years minus the pension amount and taking into account his Future Prospect and his functional disability.

27. *Learned counsel for the Insurance Company* has relied upon the judgment of *Tek Bahadur vs. Ram Bharose & Ors*. 2013 (6) ILR (Del) 4804, wherein in a similar case while considering the compensation payable to a Havaldar in the Indian Army who had been pre-maturely discharged from the Military services, the Tribunal granted the entire salary for the period of two years for which his service tenure could not be extended. It was further, observed that Havaldar on retirement from Military services, could get an employment as a Security Supervisor or at a jeweler shop in any Security Agency or in private sector and his *Loss of Future Earning capacity was assessed as 30% of his Permanent Disability on the basis of minimum wages by applying a multiplier of 14.*

28. The learned Tribunal though being cognizant of the service of the Claimant having been cut short by 8 years, has incorrectly applied the formula for calculating the loss of salary as Rs. 6,97,680/- p.a.

29. The same is re-calculated by taking the Multiplier as 15 since he was aged between 36-40 years old at the time of the accident, as under :-

i. (Rs.48,450 –the monthly pension of Rs.24,225) + 40% = Rs.43,605/- p.m.
ii. Rs. 43,605 X 15 X 12 X 30% = **Rs. 23,54,670/-**

Compensation of Educational Allowance:-

30. The Claimant has sought further compensation towards the

educational allowance of Rs.2250/- per month as per the Memorandum of Government of India dated 16.07.2018, towards the educational expenses of his daughter Attisha Thakur who was born on 06.11.2008 and was studying in Class 7th at the time of the retirement of the Claimant on 31.10.2020. Pertinently, this Circular which had been issued pursuant to the recommendations of the Seventh Pay Commission in paragraph (L) clearly stipulated that in case of retirement, discharge, dismissal or removal from service, the subsidy CEA/Hostel subsidy shall be admissible at the end of the Academic Year. However, no evidence in this regard has been led by the Claimant and the Circular has been produced for the first time during the Appeal. The Salary Certificate/Pension Certificate, no where reflects that the Claimant was getting any such allowance while he was in service.

31. There is no cogent evidence adduced by the Claimant in this regard and, therefore, the same is denied.

Non-pecuniary Heads and Interest:-

32. The claimant has been granted total of Rs. 2 lacs for pain and suffering and loss of amenities. He was further granted Rs. *1,02,000/-* for Conveyance, Special Diet and Attendant Charges. Keeping in mind the nature and extent of injuries suffered by him, no further enhancement of compensation under these Heads is justified and need no modification.

33. Likewise, the accident took place in 2013. Considering the prevailing rate of interest at that time, rate of interest is enhanced to 9% p.a. from the date of filing the petition till the Date of payment.

Relief:-

34. In the light of above discussion, the compensation amount awarded to

the Claimant is modified as under:

Sl. No.	Heads	Amount of Compensation awarded by the Tribunal	Amount of Compensation awarded/modified by this Court
1.	Loss of Actual Earning	Rs.1,00,563/-	Same
2.	Claim for Glacier Allowance	Rs.9,52,800/-	Same
3.	**Loss of Future Earnings due to Disability**	Rs.6,97,680/-	**Rs. 23,54,670/-**
4.	Mental and Physical Shock/Pain & Sufferings/Loss of Amenities	Rs.2,00,000/-	Same
5.	Conveyance, Special Diet and Attendant Charges	Rs.1,02,000/-	Same
TOTAL COMPENSATION		Rs.20,53,043/-	**Rs. 37,10,033/-**

19. In view of the above, the **total amount of Compensation awarded to the Claimant is thus modified to Rs. 37,10,033/-** along with interest @ 9% per annum, as per the terms of the Award dated 01.09.2022 passed by the learned Tribunal.

20. The Appeal stands disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 14, 2024
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