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

% **Judgment reserved on : 5th March, 2024**
Judgment pronounced on : 12th March, 2024

\+ MAC.APP. 414/2013

VISHNU DUTT MITTAL ..... Appellant
Through: Mr. Somnath Parashar, Adv.

versus

MAHESH & ORS. ..... Respondents
Through: Mr. Pankaj Seth, Adv. for R-3.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

JUDGMENT

1. The appellant has preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988[1], assailing the quantum of compensation awarded by the learned Presiding Officer, Motor Accident Claims Tribunal (South-01), Saket Courts, New Delhi[2] *vide* judgment dated 19.12.2012 in claim petition No. 304/10[3], agitating that it is not a fair and just compensation and is on a lower side as the learned Tribunal has overlooked the relevant parameters.

2. Having heard the learned counsel for the rival parties and on perusal of the record, I find that there is no challenge to the factum of the accident that occurred on 03.07.2010 involving the offending vehicle i.e., LPG Tanker bearing registration No. HR-66-0242 being driven by respondent No.1, that resulted in the appellant sustaining

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[1] MV Act
[2] Tribunal
[3] Claim petition

permanent disability in terms of the disability certificate to the extent of 88% in his lower limb, which is non-progressive but, at the same time, not likely to improve.

3. Regarding the issue in Petition No. 304/2010, evidently, the appellant was 48 years of age and it was the case of the appellant that he was working as a caterer. Although no proof of his employment was given, the learned Tribunal reckoned the minimum wages for an unskilled workman which were prevalent at the time of accident and fixed by the Government of National Capital Territory of Delhi [“**GNCTD**”] to be @ Rs. 5278/-. The loss of earning capacity was reckoned @ 60% and applying the multiplier of ’13’, the loss of earning capacity was assessed @ Rs. 4,94,026/- by the learned Tribunal.

4. Further, the learned Tribunal granted a sum of Rs. 35,000/- on account of pain and suffering; Rs. 30,000/- for loss of earning during the period of medical treatment; Rs.35,000/- towards special diet and travelling expenses; Rs.20,000/- towards future medical expenses and Rs. 11,750/- towards medical expenses. Thus, the total amount of compensation comes to Rs. 6,25,776/-.

5. Hence, the learned Tribunal awarded a total compensation of Rs.6,25,776/- (Rupees Six Lacs Twenty Five Thousand Seven Hundred Seventy Six Only) to the respondent/claimant wit interest @ 7.5% p.a. from the date of filing of the claim petition i.e. 08.10.2010 till its realisation.

6. Having heard learned counsels for the rival parties at the Bar and on perusal of the record, including the Trial Court record, e*x facie*,

the said aspect requires modification. Although the learned Tribunal rightly assumed the notional income @ Rs. 5278/- provided for an unskilled workman, the loss of future prospects has not been reckoned. The same has to be reckoned @ 25% in terms of the decision in **National Insurance Co. Ltd. v. Pranay Sethi**[4]. The annual income of the appellant thus comes to Rs. 63,336/- (5278 x 12). Now adding 25% towards loss of future prospects, the notional annual income would come to Rs. 79,170/-. Further, no apparent error has been committed by the learned Tribunal in reckoning the loss of earning capacity @ 60%. Lastly, taking the multiplier of '13' as per the decision in **Sarla Verma v. DTC**[5], the total loss of future earning capacity on account of permanent disability comes to Rs. 6,17,526/- (Rupees Six Lacs Seventeen Thousand Five Hundred Twenty Six Only).

7. There is more faultiness since the learned Tribunal has awarded the compensation towards pain and suffering @ Rs. 35,000/-, which should be enhanced to Rs. 1,00,000/-. Further, compensation of an amount of Rs. 50,000/- is awarded towards loss of amenities and enjoyment of life besides Rs. 25,000/- towards disfiguration and Rs. 50,000/- towards future medical expenses. Accordingly, the total compensation is arrived as under:-

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[4] (2017) 16 SCC 680
[5] (2009) 6 SCC 121

S. No.	Heads	Amount
1.	Annual Income	Rs.63,336/- (5278 x 12)
2.	Addition towards loss of future prospects	Rs. 79,170/- (25 % of 63,336)
3.	Multiplier	13
4.	Total Loss of future earning at 60% loss of earning capacity	Rs 6,17,526/- (79,170 x 13 x 60/100
5.	Pain and suffering Enhanced	Rs. 1,00,000
6.	Future medical expenses	Rs. 50,000/-
7.	Reimbursement of Medical Expenses	Rs. 11,750/-
8.	Disfiguration expenses	Rs. 25,000/-
9.	Special Diet Rs. 20,000/- and travelling Expense Rs.15,000/- maintained	Rs. 35,000/-
10.	Loss of earning during the period of treatment	Rs. 30,000/-
11.	Loss of amenities and enjoyment of life	Rs. 50,000/-
	Total Compensation	**Rs.9,19,276**

8. Accordingly, the total amount of compensation is worked out to be Rs. 9,19,276/- (Rupees Nine Lacs Nineteen Thousand Two Hundred Seventy Six Only), which shall be payable to the appellant with interest @ 7.5% from the date of filing of the petition i.e. 08.10.2010 till its realization.

9. Accordingly, the present appeal is allowed and the impugned award-cum-judgment dated 19.12.2012 is hereby modified. The respondent No.3/insurance company is directed to deposit the entire amount of compensation with the learned Tribunal within four weeks from today failing which, the respondent No.3/insurance company shall be liable to pay penal interest @ 12 % per annum from the date

of this judgment till realization on the amount of compensation plus the accrued interest till date.

10. The amount of compensation be realized by the appellant in terms of the directions passed by the learned Tribunal.

11. The appeal stands disposed of accordingly.

DHARMESH SHARMA, J.

MARCH 12, 2024

Sadiq/ck