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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 13th November, 2024

+ MAC.APP. 542/2024, CM APPL. 60369/2024

SH. JITENDER SHARMA

.....Appellant

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

versus

SH. NIKHIL BANSAL & ANR.

.....Respondent

Through: Mr. Sameer Nandwani, Advocate for
R-2.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CM APPL. 60370/2024 (Seeking Exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

MAC.APP. 542/2024

3. An Appeal under Section 173 of the Motor Vehicles Act, 1988 has been filed for *Enhancement of Compensation* by the Claimant who had suffered injuries in the road accident on 01.06.2019, on the following grounds:

- (i) the Petitioner had suffered *Permanent Disability of 42%* of left lower limb. He was working as delivery boy



with Zomato. His *Functional Disability* has been taken as 21% which needs to be enhanced;

(ii) the *Future Prospects* have not been granted to the Petitioner;

(iii) the compensation on the ground of *Pain & Suffering* is Rs.50,000/- which is on the lower side;

(iv) the *Loss of Amenities* in the sum of Rs.80,000/- also needs to be enhanced; and

(v) no compensation has been granted on account of *Disfigurement* and *Loss of Marriage Prospects*.

4. *Learned counsel for the Insurance Company* has submitted that the compensation has been adjudicated judiciously and does not warrant any interference.

5. **Submissions heard and record.**

Loss Of Future Earning Capacity

6. The *first ground of challenge* is that he Petitioner had suffered 42% Permanent Disability in relation to the left lower limb with diagnosis of post traumatic stiffness of left ankle. The learned Tribunal has observed that the Petitioner was doing the job of a delivery boy for Zomato which he would not be able to continue, despite which his Functional Disability has been taken as 21%. Once, the Tribunal found that the Petitioner/Appellant may not be able to do a particular nature of work, ***42% should have been taken as the Functional Disability which is accordingly granted.***

7. It was also contended that the salary of the injured Petitioner has been taken as per Minimum Wages even though he was working as a delivery boy with Zomato and earning Rs.25,000/- per month. Learned Tribunal has



rightly observed that in the absence of any documents whatsoever to corroborate his claim of salary of 25,000/- per month, it has to be taken as per Minimum Wages which was taken as Rs.19,060/- per month. There is no infirmity in the calculation of the wages of the Petitioner.

8. In the light of the judgment in *Pranay Sethi*, the petitioner would also be entitled to an addition of 40% of income towards future prospects. The monthly income of the Appellant thus comes to Rs.26,684/- [Rs.19060 + Rs.7,624 (40% of Rs.19,060)] .

9. The Functional Disability of the injured is accordingly assessed as 42%.

10. The Compensation towards **Loss of Future Earning Capacity due to Disability** is assessed as **Rs.22,86,285/-** [Rs.26,684/- per month X 12 months X 17 (age multiplier) X 42/100 (functional disability)].

Non-Pecuniary Heads

11. The **Pain and Suffering** has been granted in the sum of Rs.50,000/- . Considering that the Claimant had suffered Permanent Disability of 42%, the compensation under this head is enhanced to Rs. 1,00,000/-.

12. Likewise, **Loss of Amenities** in the sum of Rs.80,000/- awarded by the learned Tribunal is reasonable and does not warrant any interference.

13. The Petitioner has also claimed that he has not been given any compensation under the head of Disfigurement. However, the compensation has already been granted on account of Functional Disability and Future Prospects and no further compensation is warranted under the head of Disfigurement.

14. In the end, it is asserted that no compensation on account of Loss of Marriage Prospects has been granted. However, it is fairly conceded that



there is no evidence or averment on record that the injured was unmarried.

Relief:

15. Accordingly, the total compensation, thus awarded to the Petitioner comes to Rs.29,40,975.54/- which is as under:

Sl. No.	Compensation	Amount Awarded by the Tribunal	Amount Awarded/Modified by this Court
1.	Pain and Suffering	Rs.50,000/-	Rs.1,00,000/-
2.	Special Diet & Conveyance	Rs.80,000/-	Rs.80,000/-
3.	Attendant Charges	Rs.40,000/-	Rs.40,000/-
4.	Medical Expenses	Rs.2,02,210.54	Rs.2,02,210.54
5.	Loss of Leave	Rs.1,52,480/-	Rs.1,52,480/-
6.	Loss of Amenities of Life	Rs.80,000/-	Rs.80,000/-
7.	Loss of Future Earning capacity due to Permanent Disability	Rs.11,43,142.56	Rs. 22,86,285/-
TOTAL COMPENSATION		Rs.17,47,833.1/-	Rs.29,40,975.54/-

16. The Award is hereby modified and the Compensation amount is re-calculated as **Rs.29,40,975.54/- along with interest 9% p.a. from the date of filing the Claim till the date of payment, with all other terms of the Award being the same.**

17. The Appeal is accordingly disposed of along with the pending Application(s).

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 13, 2024

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