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

% ***Date of decision: 4th December, 2024***

\+ **MAC.APP. 958/2013**

J. S. BANSAL
S/o Sh. R.L. Bansal
R/o B-172, Street No.10,
Bhajanpura, Delhi-110053.

.....Appellant

Through: Mr. Navneet Goyal, Advocate.

versus

1. **MOHD. FARID** (DRIVER)
S/o Abdul Wahid
R/o C-10/3, Okhla Vihar,
Jamia Nagar, New Delhi. .....Respondent No.1

2. **SH. JATINDER MOHAN** (OWNER)
S/o Sh. M.L. Verma
R/o 1098, Sector-4,
R.K. Puram, New Delhi. .....Respondent No.2

3. **THE NATIONAL INSURANCE CO. LTD.**
Jeevan Bharti Building, Connaught Place,
New Delhi.

....Respondent No. 3

Through: Mr. Pankaj Seth, Advocate for R3.

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* ('M.V. Act', *hereinafter*) has been filed on behalf of the Appellant against

the Award dated 18.07.2013, ***for enhancement of compensation*** granted in the sum of Rs.6,83,090/- along with the interest @7.5% p.a. on Rs.5,89,790/-, on account of injuries and Permanent Disability suffered by Mr. J.S. Bansal, the Appellant, in the road accident on 14.06.2008.

2. The *grounds for seeking enhancement* are:

(i) that no *Loss of Income* has been granted for the treatment period for 14 months, w.e.f. 14.06.2008 to 31.08.2009;

(ii) that the *lump sum* amount of Rs.1,00,000/- has been given on account of *Permanent Disability of 40%* of left lower leg instead of giving it on the basis of the income and the multiplier;

(iii) that the injured was working in NSCI, Delhi on a salary of Rs.12,650/- per month, and *was compelled to take voluntarily retirement on 01.09.2009* on account of amputation, *thereby forgoing his seven years of active service;* and

(iv) that no compensation for Future Maintenance/Replacement of Artificial Limb, has been granted.

3. *Learned counsel on behalf of the Insurance Company* submits that this is an accident, which took place on 14.06.2008, which must be considered while assessing the fair compensation. The learned Tribunal has rightly assessed and given the compensation. Insofar as, his claim for Loss of Future, Employment/Income is concerned, he being a Government employee, is not entitled to any Loss of Future Income. It is submitted that there is no merit in the Appeal, which is liable to be dismissed.

4. **Submissions heard.**

5. *Briefly stated,* on 14.06.2008 at about 10:00 A.M, Mr. J.S. Bansal, the

Appellant was going on foot near NSCI, Mathura Road, New Delhi when a bus bearing No. DL 1PA 6429 driven by the Respondent No. 1 in a rash and negligent manner and at a very high speed, came from the side of Ashram and hit the Appellant. Resultantly, the Appellant sustained grievous injuries. The left leg of the Appellant was crushed and amputated. The Appellant suffered Permanent Disability of 40% *qua* his whole body.

6. FIR No. 185/08 under Section 279/338 of the *Indian Penal Code, 1860*, was registered at Police Station Tilak Marg, Delhi.

7. The Detailed Accident Report has been filed on the basis of the Charge-Sheet. The Claim Petition under Section 166 and 140 of the M.V. Act, was also filed by the Claimants.

<u>Loss of Income for Treatment Period:</u>

8. The *first ground* on which the enhancement has been sought by the injured, is that he was working in NSCI and getting a salary of Rs.12,650/- per month. He was unable to join the Service till 22.08.2009 i.e. for about 14 months and is entitled to loss of income/leave for this period.

9. As per his *Medical Discharge Summary* of Sir Ganga Ram Hospital, he remained admitted in the hospital from 14.06.2008 to 20.06.2008 i.e. for about six days on account of crush injuries left leg with fracture both bones (right) leg with lacerated wound on scalp right side. The *below knee amputation left* was done on 14.06.2008 under G.A. and ORIF right tibia and fibula with bone grafting done on 17.06.2008 under GA. Multiple medicines were recommended with a follow-up. He was given the treatment of Debridement with free RAFF cover done under G.A. On discharge, he was advised to take various medicines and was advised to follow the treatment with further appointments. He has proved the Discharge

Summary, Ex-PW-2/1which reflects that he was admitted in Sir Ganga Ram Hospital from 12.07.2008 to 18.07.2008 i.e. for six days, for Follow-up treatment of fracture of both bones right lower leg with exposed implant.

10. Thereafter, he was again admitted in Sir Ganga Ram Hospital from 21.01.2009 to 09.02.2009 because of the implant failure. The implant was removed from both bones leg (right) with internal fixation right tibia with 10-hole LCP and screws with bone grafting from left iliac crest done. On discharge, he was advised to take medicines and also to take follow-up treatment.

11. The Petitioner in order to prove the leave record, had examined *PW-1, Mr. Ajay Sharma, Accounts Clerk, National Sports Club of India (NSCI),* who proved the employment record, Ex.PW-1/E and the Leave record, Ex.PW-1/F. According to the Leave record, the Petitioner remained on Medical Leave with pay from 14.06.2008 to 15.05.2009 while thereafter, he remained on leave till 22.08.2009, without pay. He joined the service on 23.08.2009 till 31.08.2009, i.e. for about a week and thereafter, submitted his papers for Voluntary Retirement Service (VRS).

12. The Leave Certificate Ex. PW-1/F establishes that since the date of accident, the Petitioner was unable to join his services, till he submitted his retirement papers on 01.09.2009. It implies that because of the injury suffered by him resulted in amputation of his leg, he was unable to resume his duties and remained on leave for a period of 14 months.

13. Though as per the Leave Certificate Ex. PW-1/F, he got Medical Leave from 14.06.2008 till 15.05.2009 with Pay, but it cannot be overlooked that because of the accident, he has been compelled to utilise his Medical Leave for a period of about 11 months, which he would have been otherwise

able to utilise in his remaining service career. Therefore, even though he got his salary for this period but because of his consumption of Medical Leave, he is entitled to be reimbursed for the loss of Medical Leave and the salary for this entire period. ***It is, therefore, held that the Petitioner is entitled to Loss of Salary from 14.06.2008 to 23.08.2009 i.e. for about 14 months. He is, therefore, awarded the Loss of Income.***

14. Now comes the determination of his monthly income. PW-1, Sh. Ajay Sharma had produced the Salary Certificate of the Petitioner as payable to him in the month of June, 2008 in which the basic pay was Rs.2,320/- and Dearness Allowance was Rs.5,360/- i.e. Rs. 7,680/-. The other perks that he was getting was a personal pay of Rs.87/-. His Salary Slip for the month of June, 2008, is Ex.PW-1/D, which is as under:-

Basic Pay	Rs. 2,320/-
Dearness Allowance	Rs. 5,360/-
Personal Pay	Rs. 87/-
Spl. Allowance	Rs. 270/-
Washing Allowance	Rs. 150/-
Medical Allowance	Rs. 200/-
Food Allowance	Rs. 90/-
Total Pay	Rs. 8,477/-

The Salary of the Appellant was Rs. 8,477/- p.m. while at the time of his retirement after about 14 months, his salary got enhanced to Rs.9,335/- p.m. as reflected in the Slip, Ex.PW-1/G that was prepared for paying him the dues at the time of his retirement. If the perks in the sum of Rs. 797/- are reduced, the monthly income comes to Rs 8,538/- per month. (Rs.9,335 –

Rs. 797). ***The Appellant is, therefore, awarded a sum of Rs. 8,538 X 14 i.e. Rs. 1,19,532 towards his Loss of Income during the treatment period, on account of Leaves.***

Loss of Future Income/Future Prospects:

15. *The other aspect* which has been challenged by the Petitioner, is that he has not been granted *Future Prospects*.

16. The Claimant has further submitted that he has been granted the lump sum amount of Rs.1,00,000/- on account of Permanent Disability of more than 40% of left lower leg, on account of below knee amputation.

17. The *first aspect* which comes for consideration is to ascertain the Functional Disability suffered by the Petitioner is on account of Permanent Disability of 40% of left lower leg on account of amputation. As per his own testimony, he was working as a Supervisor in NSCI.

18. The *first aspect for consideration* is the Loss of his Future Prospects. He was in the job of NSCI and getting a salary of Rs.9,335/- p.m. at the time of retirement. As explained above, if the perks in the sum of Rs. 797/- are reduced, the monthly income comes to Rs 8,538/- per month.

19. Pertinently, the Appellant has claimed that he had suffered Permanent Disability of 40% of left lower limb on account of amputation. He was working as a Supervisor in NSCI, but because of the injuries he was unable to continue to work and therefore, Functional Disability be taken as 100%.

20. Considering the nature of injuries and also the fact that he was not able to resume the service after the accident and had only joined for 9 days in token before submitting his resignation papers. It is held that he has not been able to resume his services. *The question of Functional Disability may be taken as 100%.*

21. Herein it is also pertinent to assert that the Appellant at the time of submitting his VRS papers, he was given 50% of future salary for 60 years in the sum of Rs.3,92,070/- aside from gratuity. A total sum of Rs.5,64,408/- was, therefore, paid to him. This amount has not been given to him on account of his pension, but in fact it is an ex-gratia payment made on account of his inability to continue in the service purely consequent to the injuries suffered by him in the accident. Therefore, this amount of Rs.3,92,070/- which though has been calculated on the basis of 50% of his salary due and payable in 7 years it is not a pecuniary advantage relatable to the compensation received on account of the injuries. Rather, it is in the nature of ex-gratia payment made by the employer on account of the difficult situation of the Appellant.

22. In the case of *Helen C. Rebello Vs. Maharashtra State Road Transport* 1999 (1) SCC 90, the issue before the Apex Court was whether the amounts received by the deceased by way of provident fund, pension, life insurance policies and similarly, cash, bank balance, shares, fixed deposits etc. are pecuniary advantages received by the heirs on account of death of deceased and liable to be deducted from the compensation. The Apex Court held that none of these amounts have any correlation with the compensation receivable by the dependants under the Motor Vehicles Act, which is on account of injury or death without making any contributions towards it. The fruits of the amount received through contribution of the insured, cannot be deducted out of the amount receivable under the Motor Vehicles Act. Only the amount under the Motor Vehicle Act which are those which are payable without any contribution, as it is statutory in the nature. Therefore, the amount paid at the time of VRS is not liable to be

deducted.

23. Considering that he was 54 years old at the time of accident, therefore, as per *Sarla Verma v. DTC,* (2009) 6 SCC 121 for calculating the Future Loss of prospects, a multiplier of 11 is applicable and he is further entitled to 10% of future prospects as per *National Insurance Co. Ltd. v. Pranay Sethi,* (2017) 16 SCC 680. ***The Loss of Future Income on account of disability, therefore, is calculated as (Rs. 8,538 /- X 12 X 11 (multiplier)X 100%(Functional disability) +10%(future prospect), which comes to Rs. 12,39,717.60/-***

Compensation towards Artificial Prosthetic and its Maintenance:

24. The learned Tribunal had considered the quotation, Ex.4/1 that was produced by PW-4, Sh. Gurmeet Marketing Executive of Endolite Prosthesis and Orthotic, to grant the compensation in the sum of Rs.63,300/- for purchase of prosthesis.

25. However, the Petitioner had claimed that the life of the artificial limb is three years. Though, there is no literature in this regard about the life of the prosthesis, but considering that he was 54 years old at the time of accident, it can be reasonably expected that he would require the change of prosthesis at least one more time in his lifetime. ***Therefore, he is granted an additional sum of Rs.63,300/- i.e. a total sum of Rs. 1,26,600/-towards the cost of prosthesis.***

26. The Petitioner had further deposed that his silicon liner has to be removed after every one and a half year and the same would cost Rs.10,000/-.

27. Though there is no cogent evidence produced in regard to *the silicon liner* or that it would cost Rs.10,000/- or requires change after every one and

a half years, but it can be reasonably estimated that some amount would be required for the maintenance of the prosthesis on a regular basis. ***The maintenance charges of prosthesis are enhanced from Rs.10,000/- to Rs.50,000/-.(@ Rs. 10,000 x 5 times).***

Relief

28. **The compensation is re-assessed as under**:-

29. The impugned Award is liable to be modified as under:

S.No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1.	Medicines and Medical Treatment	Rs.3,04,790/-	Rs.3,04,790/- (Same)
2.	Pain and suffering loss of Amenities of life	Rs.1,50,000/-	Rs.1,50,000/- (Same)
3.	Conveyance and Special Diet	Rs.20,000/-	Rs.20,000/- (Same)
4.	Loss of income on account of Medical Treatment	NIL	**Rs. 1,19,532/-**
5.	**Loss of Future income on account of disability**	Rs.1,00,000/-	**Rs. 12,39,717.60/-**
7.	For future treatment	Rs.20,000/-	Rs.20,000/- (same)
8.	**For artificial prosthetic and its maintenance**	Rs.73,300/- (63300+10,000)	**Rs. 1,76,600/- (1,26,600+50,000)**
9.	Attendant Charges	Rs.15,000/-	Rs.15,000/- (same)
	TOTAL COMPENSATION	Rs.6,83,090/-	**20,45,639.60/-** (rounded off to

			Rs. 20,45,640/-)

30. Thus, the **total compensation** granted to the Claimants is re-calculated as **Rs. 20,45,640/-** along with interest @7.5% per annum from the date of the Claim till the disbursal of the amount, in terms of the Impugned Award dated 18.07.2013 of the learned Tribunal.

31. The Appeal is allowed.

32. The Appeal stands disposed of along with the pending application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 4, 2024/RS