



2024:DHC:8750



\$~11

* IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of decision: 06th November, 2024

+

MAC.APP. 816/2017, CM APPL. 33198/2017**SATISH KUMAR (Deceased through LRs)**

1. Smt. Seema
W/o Late Sh. Satish Kumar,
2. Kanchan, D/o Late Sh. Satish Kumar,
Both R/o C - 60, Radhey Shyam Park Extension,
Krishna Nagar, East Delhi – 110051
3. Avinash S/o Late Sh. Satish Kumar
4. Subhash Kumar S/o Late Sh. Satish Kumar
Both R/o 54/42, Dev Nagar, Nagala,
Chhaua, Agra , Uttar Pradesh
5. Smt. Staify W/o Sh. Rakesh,
D/o Late Sh. Satish Kumar,
R/o A- 30 , Old Vidhyadhar Nagar,
Vidyadhar Nagar, Jaipur, Rajasthan
6. Smt. Kirti Sharma W/o Sh. Rachit Sharma,
D/o Late Sh. Satish Kumar,
R/o Khairatabad, Hyderabad,
Telangana- 50045.

.....Appellant

Through: Appearance not given.

Versus

ARUN PRATAP SINGH & ORS (UNITED INDIA INS CO LTD)

.....Respondent

Through: Mr. Ravi Sabharwal, Advocate for R-3.

CORAM:

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****JUDGMENT (oral)**

1. An Appeal under Section 173 of the Motor Vehicles Act, 1988 has been filed by the Appellant/ Injured for enhancement of the Compensation amount granted in the sum of Rs.12,88,978/- along with interest @ 9% per annum from the date of filing of Detailed Accident Report (DAR) i.e. 10.05.2014 till the date of payment, vide Award dated 27.04.2017.
2. The Appellant/Claimant (who has expired during the pendency of the present Appeal on 29.03.2023 and is represented through his legal heirs) suffered grievous injuries in an accident on 16.01.2014 in regard to which FIR No.45/2014 under Section 279/338 IPC was registered at Police Station Kotwali.
3. The Appellant/Claimant had suffered **90% of permanent disability with respect to his entire body** i.e both upper limbs and both lower limbs.
4. Considering the Appellant/Claimant was working as a Conductor with DTC and was earning Rs.24,488/- per month as salary at the time of accident, learned Tribunal awarded a total compensation of **Rs.12,88,978/-** along with interest @ 9% per annum as under:-

S. No.	Heads	Awarded by Tribunal
1.	Medicines and Treatment	Rs. 3,00,000/-
2.	Conveyance	Rs. 1,00,000/-
3.	Special Diet	Rs. 1,00,000/-
4.	Loss of Earned Leave	Rs. 2,04,880/-
5.	Attendant charges	Rs. 50,000/-
6.	Pain and Suffering	Rs. 3,00,000/-



7.	Loss of Amenities, Loss of expectation of Life and prospects of marriage due to disability	Rs. 5,00,000/-
8.	Interest	9% p.a.
	TOTAL	Rs. 12,88,978/-

5. The Impugned Award has been challenged on the following *grounds*:
- The *Loss of Salary* has been granted only for a period of 10 months, while on account of Permanent Disability the Petitioner was entitled to the salary for the future, as he was unable to resume his duty:
 - No *Future Prospects* have been granted; and
 - The *Attendant Charges* of Rs.50,000/- has been granted only for a period of 20 months and need to be enhanced considering that he required an attendant for his entire life time.

6. **Submissions heard and record perused.**

Loss Of Salary And Future Prosoects:

7. The *first aspect of challenge* is in regard to Loss of Salary.
8. The learned Tribunal in the Impugned Award has referred to the testimony of PW-2/Sh. Jagannath, PW-4/Sh. S.P. Gupta and PW-5/Sh. B.S. Chauhan, all officials from DTC who have proved the record of employment of the Petitioner with DTC. PW-5/Sh. B.S. Chauhan has further proved the DTC record, according to which the Petitioner was drawing a salary of Rs.24,488/- p.m. at time of accident.
9. It has come on record that an *Application* had been filed on behalf of the Claimant, seeking to join the duty on 10.09.2015 and considering the



said letter, the learned Tribunal granted the *reimbursement of Leave for a period of 10 months* and granted compensation of **Rs.2,04,880/-** (24,480 X 10 months).

10. It is pertinent to note that even though the Letter for rejoining had been made by the Claimant, but because of his absolute disability, he was unable to resume his services. Thus, the learned Tribunal had observed that the Appellant/Claimant was entitled to his full salary under *Section 47 of Persons with Disabilities Act, 1955*. The relevant part of the Award reads as under:

“Though during the course of evidence it has come on record that the petitioner has not been paid any salary since March 2015 till date BUT at the same time in view of the admission on the part of PW-5 w.r.t the circular issued by the DTC vide No. Admn. (Misc) PLD/2006/136 dated 20.03.2006 issued in pursuance of Hon'ble High Court order dated 12.09.2005 in CWP No. 869/2000, directing the DTC to comply with the provision of section 47 of the Persons with Disability Act, 1995, the DTC cannot dispense with or reduce in rank an employee who has acquired any disability during the course of service except having the power to shift him to some other post having same pay scale and service benefit exhibited as PW5/R3X1, the DTC is under a legal mandate to provide salary along with the arrears to the petitioner and as such no amount towards the said non payment of salary/ arrear can be awarded by this court.”

11. The learned Tribunal has, therefore, being cognizant of the fact that the claimant was unable to join the services, and he was entitled to his full salary and perks for the requisite period. *Since the entitlement of the Claimant for entire salary has already been adjudicated, no enhancement*



on account of Loss of Salary or Future Prospectus is required to be made.

12. The Petitioner is at liberty to seek the salary entitlement through Execution or by filing and other proceedings available under Law.

ATTENDANT CHARGES:

13. The *next ground of challenge* is that the Attendant Charges are granted for a period of 20 months only, despite the fact that the Claimant required an Attendant for his entire life time due to his vegetative state. It is also asserted that the care to the deceased was provided by his wife Mrs. Seema and therefore, the amount towards attendant charges shall be disbursed to her.

14. It is not is dispute that the injured had suffered 90% permanent disability ***90% of permanent disability with respect to his entire body*** i.e both upper limbs and both lower limbs.

15. Considering the submissions made, the *Attendant Charges* are granted to the Claimant @ 2,500/- per month from the date of accident i.e. 06.01.2014 till the date of his demise i.e. 29.03.2023. The **Attendant Charges** are, therefore, modified in the sum of **Rs.2,75,000/-** (2500 X 110 months), *subject to adjustment of Rs.50,000/- which has already been awarded by the learned Tribunal.*

RELIEF:

16. In view of the above observations, *the Impugned Award dated 27.04.2017 is modified only to the extent of Attendant Charges* and the total Compensation is encapsulated in the table as under:-

S.	Heads	Awarded by	Modified by this
----	-------	------------	------------------



No.		Tribunal	Court
1.	Medicines and Treatment	Rs. 3,00,000/-	Rs. 3,00,000/-
2.	Conveyance	Rs. 1.00,000/-	Rs. 1.00,000/-
3.	Special Diet	Rs. 1.00,000/-	Rs. 1.00,000/-
4.	Loss of Earned Leave	Rs. 2,04,880/-	Rs. 2,04,880/-
5.	Attendant Charges	Rs. 50,000/-	Rs. 2,75,000/-
6.	Pain and Suffering	Rs. 3,00,000/-	Rs. 3,00,000/-
7.	Loss of Amenities, Loss of expectation of Life and prospects of marriage due to disability	Rs. 5,00,000/-	Rs. 5,00,000/-
8.	Interest	9% p.a.	9% p.a.
	TOTAL	Rs. 12,88,978/-	Rs. 15,13,978/-

17. The Compensation is accordingly, enhanced to Rs. **15,13,978/-** along with interest @9% p.a. on the enhanced amount, from the date of Claim till the date of disbursement. The enhanced amount being towards the attendant charges, the same be released to Smt. Seema, impleaded as the wife of the deceased.

18. The Appeal is hereby disposed of, along with pending Application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 06, 2024/va