



2024:DHC:10092



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision: 16th December, 2024**+ **MAC.APP. 1032/2018****ASHKARAN OJHA**

S/O Sh. Dhula Ram Ojha

R/O 138, Cross Road, Sant Nagar, Burari,

Delhi- 110084

.....Appellant

Through: Mr. Manish Maini, Ms. Divya
Saini & Mr. R.K. Jain, Advocates

Versus

SHIVAM KUMAR

R/O 197, Arachna Vaishali, Sector-3,

P.S. Indrapuram,

Ghaziabad, U.P.

.....Respondent No. 1

SH. PAWAN GANDHI

R/o 13/5, Indra Vikas Colony

New Delhi-09

.....Respondent No. 2

THE UNTIED INDIA INSURANCE CO. LTD.

2/27 Okhla Road, Opposite Softel Surya,

Sari Juliena, Delhi

.....Respondent No. 3

L&T GENERAL INSURANCE CO. LTD.

L&T House, N.M. Marg,

Bailard Estate, Mumbai

.....Respondent No. 4

Through: Mr. Amit K. Singh, Advocate for
R-3

Mr. Rajeev M. Roy & Mr. P.

Sreenivasan, Advocates for R-4

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HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present Appeal under *Section 173* of the *Motor Vehicles Act, 1988* has been filed by the Appellant-Injured to seek enhancement of the compensation granted in the sum of Rs.5,23,614/- along with interest @ 9% per annum, on account of injuries suffered by him in the road accident on 15.02.2016.
2. The grounds for *seeking enhancement of compensation* are:-
 - (i) That the appellant has not been granted compensation for *Loss of Income* for the period he remained under treatment from 15.02.2016 till 07.03.2017;
 - (ii) That the *attendant charges* have been granted for three months @10,000/- per month, despite the receipts of payment of Rs.12,000/- per month for the period of six months to Rajesh Sharma;
 - (iii) That the *Functional Disability* has been assessed at 21%, which should have been taken at least 30%, as the appellant was working as LIC Agent, which involves field duty;
 - (iv) That the compensation awarded under the *Non Pecuniary Heads* is required to be enhanced; and
 - (v) That no compensation has been granted for *Loss of Amenities of Life, Disfiguration and such other heads*.
3. *Learned counsel appearing on behalf of respondent No.2* submits that the Attendant Charges have rightly been assessed by the learned Tribunal considering that there was no cogent evidence of any payment



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made to Rajesh Sharma, the alleged Attendant. Also, the appellant was working as LIC Agent and there is nothing on record to show that he was unable to do his work continuously and therefore, functional disability has rightly been assessed by the learned Tribunal. Learned counsel also submits that the compensation granted under the Non-Pecuniary Heads is just and proper and calls for no interference.

4. ***Learned counsel appearing for respondent No.3*** has also made submissions on similar lines, as has been made by learned counsel for respondent No.2.

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

6. ***Briefly stated***, on 15.02.2016, the Appellant/Injured was coming to his house at Sant Nagar, Burari on his two wheeler scooter *via* Nirankari Samagan Road. At about 01:00 P.M., when he reached at Nirankair Samagam Road, a vehicle i.e., Hundai I-10 Car bearing No. DL 3C BR 3441 being driven by one Shivam Kumar, Respondent No. 1 herein, at a high speed, *came from the wrong side of the road and* after overtaking a car, it hit the scooter of the Appellant/Injured forcibly, because of which Appellant/Injured fell and suffered multiple injuries.

7. *The FIR No. 213/2016* under S.279/337 of the IPC was registered Police Station Mukherjee Nagar, Delhi. After due investigations the Chargesheet was filed before the concerned learned Metropolitan Magistrate.

8. The Detailed Accident Report was filed before the learned Claim Tribunal which granted compensation in the sum of Rs. 4,88,000/- along with interest @ 9% per annum *vide* Award dated 22.05.2018, which was

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subsequently modified and enhanced to Rs. 6,11,000/- along with interest @ 9% per annum vide modified Award dated 02.06.2018.

9. By way of present Appeal, the Appellant/Injured has sought enhancement of the compensation granted vide revised Award dated 02.06.2018.

Loss of Income: -

10. The *first ground* for seeking enhancement of the compensation is that the Appellant/Injured has not been granted compensation for Loss of Income for the period he remained under treatment from 15.02.2016 till 07.03.2017. The Appellant/Injured was working as an LIC Agent and was drawing a salary of Rs. 2,50,645/- per annum. After the accident on 15.02.2016, he remained under treatment till 07.03.2017.

11. The Appellant himself produced proved the receipts of the payment to his attendant Shri Rajesh Sharma, Ex. PW1/39 to 47, which certified that in addition to taking day-to-day care of the Appellant/Injured, he was also taking care of his LIC work, like collecting premiums from the Policy Holder, to go to the Office of LIC, to deposit KYCs and also to get the LIC receipts and again to return the LIC Policy Receipts to the Policy Holder etc. From these receipts on which the reliance has been placed by the Appellant/Injured himself, it is evident that though he had suffered injuries, but his work of being an LIC Agent continued and he had, in fact, employed Shri Rajesh Sharma, Attendant, who was assisting him regularly in his LIC work.

12. Because of the injuries suffered by him, he may have had been unable to resume his job as an LIC Agent for about three months in all



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and, therefore, suffered Loss of Income but *no loss of income has been granted by the learned Claim Tribunal.*

13. The learned Claim Tribunal had made an assessment of the income of the Appellant/Injured on the basis of DAR as Rs. 2,50,645/- per annum.

14. Looking at the medical documents and the testimony of the Appellant/Injured, *the Appellant/Injured is granted Loss of Income for three months* in the sum of **Rs. 2,50,645/- x 1/12 X 3 = Rs. 62,661.25 rounded of to Rs. 62,670/-.**

Attendant Charges: -

15. The *second ground* of challenge to the impugned Award is that the Attendant Charges for the period of three months have been granted @ Rs. 10,000/- per month, whereas the same should have been granted in the sum of Rs. 12,000/- per month.

16. The Appellant/Injured in his testimony had deposed that he had engaged Shri Rajesh Sharma as an Attendant for a period of 8 months and paid him Rs. 12,000/- per month as salary. The Appellant/Injured has proved the receipts of payment, Ex. PW1/39 to 47. A suggestion was given to the Appellant/Injured in his cross-examination that no such payment made by him to Shri Rajesh Sharma, Attendant, and the receipts are forged and fabricated.

17. The Discharge Summary of Sushruta Trauma Centre, Ex.PW1/1 reflected that the Appellant/Injured was admitted in the Hospital from 15.02.2016 to 18.02.2016 i.e. for three days. The Appellant/Injured had suffered dislocation of hip joint. After treatment, at the time of discharge,



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he was advised to take medication.

18. Further OPD Cards of the Appellant/Injured reflect that he was advised bed rest. He, thereafter, got admitted again in Sushruta Trauma Centre from 08.08.2016 to 13.08.2016 i.e. for six days, and post-treatment, he was advised various precautions and medicines to be continued by him. As per the OPD Card dated 19.08.2016, it was noted that the Appellant/Injured's sutures healed well. However, as per the OPD Card dated 27.09.2016, he was recommended complete rest and to avoid walking.

19. From the medical records of the Appellant/Injured, it can reasonably be held that he would have required an Attendant from February, 2016 till about September, 2016 i.e. for about 8 months.

20. The Appellant/Injured had proved the receipts of the payment, Ex. PW1/39 to 47, which had been given by him to Shri Rajesh Sharma which stated that because of the accident, the Appellant/Injured suffered injuries and he was taking care of his day-to-day requirements, including giving him bath, taking hospital, administering medicines, etc.

21. Considering the aforesaid facts, there is no reason to disbelieve that Rs. 12,000/- per month was being paid to the Attendant, Shri Rajesh Sharma, for a period of 8 months. Accordingly, ***the compensation towards the Attendant Charges is hereby enhanced from Rs. 30,000/- to Rs. 96,000/- (Rs. 12,000/- per month x 8 months = Rs. 96,000/-).***

Functional Disability: -

22. The *third ground* of challenge to the impugned Award is that the Appellant/Injured had suffered permanent disability of 41% of his right



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lower limb, but the same has been assessed as ***Functional Disability of 21%***.

23. It is submitted that Appellant/Injured being an LIC Agent, his work involved field duty which he is not able to do on account of his physical disability. The functional disability of the Appellant/Injured should have been taken as at least 30%.

24. While as per the *Permanent Disability Certificate*, he has suffered permanent disability of 41% of the right lower limb, but his nature of work is that of an LIC Agent. Pertinently, the Appellant/Injured himself has relied upon the Receipts, Ex. PW1/39 to 47, wherein Shri Rajesh Sharma has certified that in addition to taking day-to-day care of the Appellant/Injured, he was also taking care of his LIC work, like collecting premiums from the Policy Holder, to go to the Office of LIC, to deposit KYCs and also to get the LIC receipts and again to return the LIC Policy Receipts to the Policy Holder etc. From these receipts on which the reliance has been placed by the Appellant/Injured himself, it is evident that though he had suffered injuries, but his work of being an LIC Agent continued and he had, in fact, employed Shri Rajesh Sharma, Attendant, who was assisting him regularly in his LIC work.

25. In these circumstances, ***the learned Claim Tribunal has rightly taken the Functional Disability of 21% and the same does not warrant any interference.***

Pecuniary and Non-Pecuniary Heads: -

26. The *fourth and fifth grounds* of challenge to the impugned Award are that the compensation granted under the Pecuniary and



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Non-Pecuniary Heads is required to be enhanced.

27. As already discussed above, the Appellant/Injured remained under treatment for about eight months and was regularly going to the Hospital till about March, 2013 for follow-up, aside from being admitted on two occasions.

28. Accordingly, the expenditure of *Conveyance* is enhanced from **Rs. 15,000/- to Rs. 30,000/-**. The expenditure on *Special Diet* is enhanced from **Rs.20,000/-to Rs. 30,000/-**. The compensation on account of *mental and physical shock* and also pain and suffering is enhanced from **Rs. 10,000/- and Rs. 15,000/- respectively to Rs. 75,000/- collectively**. The compensation towards Loss of *Amenities of Life* has been given **NIL**. The same is hereby given in the sum of **Rs. 50,000/-**. The compensation towards *Disfiguration* given in the sum of **Rs. 20,000/- is enhanced to Rs. 50,000/-**.

29. In view of above, the compensation is recalculated as under: -

S. No.	Heads	Awarded by Tribunal (in rupees)	Enhanced by this Court (in rupees)
PECUNIARY LOSS			
1.	Expenditure on treatment	45,166/-	Rs.45,166/-
2.	Expenditure on conveyance	15,000/-	Rs.30,000/-
3.	Expenditure on special diet	20,000/-	Rs.30,000/-
4.	Cost of nursing/attendant	30,000/-	Rs.96,000/-
5.	Loss of earning capacity	NIL	NIL
6.	Loss of income	NIL	Rs. 62,670/-



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7.	Any other loss which may require any special treatment or aid to the injured	NIL	NIL
NON-PECUNIARY LOSS			
8.	Compensation for mental and physical shock	10,000/-	Rs. 75, 000/- collectively.
9.	Pain and suffering	15,000/-	
10.	Loss of amenities of life	NIL	Rs.50,000/-
11.	Disfiguration	20,000/-	Rs.50,000/-
12.	Loss of marriage prospects	NIL	NIL
13.	Loss of earning, inconvenience, hardships, disappointment, frustration, mental stress, dejection and unhappiness in future life etc.	NIL	NIL
DISABILITY RESULTING IN LOSS OF EARNING CAPACITY			
14.	Percentage of disability assessed and nature of disability as permanent or temporary	41% permanent disability	21% Functional Disability (same)
15.	Loss of amenities or loss of expectation of life span on account of disability	NIL	NIL
16.	Percentage of loss of earning capacity in relation to disability	21% (qua whole body)	Same
17.	Loss of future income	Rs.3,68,448.15/-	Rs.3,68,448.15/-

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	– (Income x % Earning capacity x Multiplier)		
TOTAL		Rs.5,23,614.15/-	Rs.8,10,000/- (rounded off)

Relief: -

30. The Appellant is granted enhanced compensation amount of **Rs.8,10,000/-** along with interest @ 9% per annum, to be deposited by the Insurance Company before the learned Claim Tribunal within four weeks, which may be disbursed in accordance with modified Award dated 02.06.2018.

31. Accordingly, the Appeal along with pending Application(s), if any, is hereby disposed of in the aforesaid terms.

**NEENA BANSAL KRISHNA
(JUDGE)**

DECEMBER 16, 2024

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