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

% *Date of decision: 5th November, 2024*

+ **MAC.APP. 19/2020**

RAJBIR SINGH

.....Appellant

Through: Appearance not given.

versus

NATIONAL INSURANCE COMPANY LIMITED & ORS

.....Respondents

Through: Mr. Atin Shankar Rastogi, Mr. Aman Kapoor and Mr. Adil Vasudeva, Advocates for R-1.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. An Appeal under Section 173 Motor Vehicle Act, has been filed on behalf of the Claimant in regard to the Award dated 01.08.2019 to seek enhancement of the compensation. The *grounds of challenge* are:

- i. that a *Permanent Disability Certificate dated 31.03.2016* was filed directly by Deen Dayal Upadhyay Hospital in the Court certifying *40% Permanent Disability of right lower limb*, which has not been considered while calculating the *Loss of Future Earning Capacity*; and
- ii. that the compensation granted under various *Non-Pecuniary heads* is also on the lower side.



2. It is, therefore, submitted that the compensation amount, be enhanced.

3. *Learned counsel on behalf of the Insurance Company* has contended that the learned Tribunal has rightly considered the Temporary Disability Certificate and has given correct observations therein. There is no ground for enhancement of the compensation and the Appeal is liable to be dismissed.

4. **Submissions heard and record perused.**

5. *Briefly stated*, Shri Rajbir Singh/Appellant met with an accident on 21.06.2013, at about 08:00 A.M, while he was going on his motorcycle that was hit by a Wagon Car bearing No.HR26AU-1349 driven in rash and negligent manner at a high speed by its driver and he suffered injuries leading to *40% Permanent Disability of right lower limb*. *FIR No.183/2013 P.S. Chhawala under Section 279/338 IPC, 1806* dated 21.06.2013 was registered against Respondent No.2/Driver. The Appellant by way of the impugned Award, has been granted compensation of Rs.13,62,000/- along with interest @ 9% per annum.

Loss of Future Earning Capacity

6. The *first ground* on which the enhancement of compensation has been sought is that the Appellant had suffered Permanent Disability to the extent of *40% as per the Disability Certificate dated 31.03.2016* which was directly received from Deen Dayal Upadhyay Hospital in the Court and has not been considered.

7. The record shows that the *Permanent Disability Certificate dated 31.03.2016* was received in the Court, whereby the Medical Board had



certified the *Permanent Physical Disability as 40% in relation to right lower limb.*

8. As per the evidence on record, the Appellant/injured was doing service in DAV Public School, Dwarka, New Delhi and was getting a salary of Rs.19,000/- per month. *PW-2/Sh. Surender Pal*, Stenographer, DAV Public School was examined, who deposed that the Appellant was working as Peon and was regularized in the year 2001. *He* further clarified in his cross-examination that the salary of the injured has been increased to Rs.27,000/- approx. who continues to work in the organization (as on 02.08.2017).

9. The Appellant/Claimant was proved to be in regular job of a peon with DAV Public School. At the time of accident in the year 2013, he was getting a consolidated salary of Rs.17,899/- which was taken for the purpose of calculating the Loss of Income. There has been no decrease in the salary and there is no impediment which has been suffered by him in his career progression.

10. The disability is required to be appreciated in the context of nature of injury which was *malunited fracture IT femur with fracture shaft of femur with fracture both bone right lower limb.*

11. *The learned Tribunal has rightly granted him only Loss of Income* for the period during which he remained on leave for a period of six months, sine he has continued in job and has been getting regular salary. The injured has not proved in any manner that he suffered any financial loss on account of the Permanent Disability suffered by him in the accident.

12. However, the *main question is whether he is entitled to Loss of future earning Capacity on account of Permanent Disability of 40% of right lower*



limb suffered by him. There is no denying that any Permanent Disability suffered by an injured, results in his reduced earning capacity or impacts his career progression, and he needs to be compensated. The *pertinent aspect* is whether this Court can take note of his limitation in getting a job post his retirement, as has been claimed by the Appellant. He has placed reliance on TATA AIG General Insurance Co. Ltd. vs. Dipanjan Ghosh & Ors. MAC.APP.44/2014 decided by this Court on 02.03.2016; United India Insurance Company Limited vs. Zile Singh & Ors. MAC.APPEAL No.861/2010 decided by this Court on 27.09.2017; Desh Raj Singh Gautam vs. Sunil Kumar and Ors. MAC.APP.632/2007 decided by this Court on 20.05.2016; Kale Ram vs. Ajay & Ors. MAC.APP.615/2013 decided by this Court on 18.11.2022 and Anita A. Pathak vs. Raj Bahadur & Ors. MAC. APP.466/2010 along with MAC.APP.451/2010, MAC.APP.459/2010, MAC.APP.454/2010, MAC.APP.455/2010, MAC.APP.456/2010 and MAC.APP.464/2010 decided on 15.02.2012, wherein this Court has considered that any Permanent Disability suffered by the injured may not impact his financial capacity immediately, but would definitely have an impact post his retirement and he may not be able to take up a job after post-retirement.

13. In the judgments relied upon by the Appellant, while being cognizant that the injured was in the employment and had not suffered any salary loss, but it was considered that he may suffer some impediment in getting a job in future post his retirement which is generally at the age of 60 years, 30% enhancement of the current salary was then taken to calculate the compensation.

14. In the present case, though the injured has not adduced any evidence



about the age till which he would continue in service in DAV School or that his disability would prevent him from taking up any job in future, but on the basis of the legal precedents, it is held that on his retirement, which is normally at the age of 60 years, he may not be able to take up a job post retirement.

15. The income of the Appellant has been shown as Rs.17,899/- which is rounded off to Rs.18,000/- and 30% is added to his salary towards his future increase in his salary. Multiplier of 9 is taken in accordance with the retirement age of 60 Years.

16. The **Loss of Future Salary** is re-calculated as $18000 + 5400$ (30% of 18000) $\times 12 \times 9 =$ **Rs.25,27,200/-**.

Non-Pecuniary Heads:

17. The Appellant has also claimed that he has been granted less compensation under the ***Non-Pecuniary Heads***.

18. The learned Tribunal has granted compensation for Mental & Physical Shock in the sum of Rs.30,000/- and Pain & Suffering as Rs.1,00,000/-. The Loss of Amenities have been granted at Rs.70,000/-. However, these were granted by observing that suffering from 42% *Temporary Disability*.

19. Considering, that now the Appellant has been assessed to have suffered **40 % Permanent Disability**, the compensation for *Mental & Physical Shock* is enhanced to **Rs. 50,000/-**, the compensation towards *Pain & Suffering* is enhanced to **Rs.1,50,000/-** and the *Loss of Enjoyment of Life and Amenities* is enhanced to **Rs.1,00,000/-**.

20. In so far as compensation towards *Disfiguration* is concerned, the



Appellant is granted **Rs.30,000/-**.

21. No compensation can be granted towards Loss of Marriage Prospects as there is no proof of the Appellant being unmarried.

Relief:

22. The total Compensation thus, granted by this Court is calculated as under:

Sl.No.	Heads	Compensation granted by the Tribunal	Compensation granted/enhanced by this Court
1.	Medicines & Treatment	Rs.9,50,000/-	Same
2.	Conveyance	Rs.40,000/-	Same
3.	Special Diet	Rs.40,000/-	Same
4.	Attendant Charges	Rs.24,000/-	Same
5.	Loss of Income	Rs.1,07,394/-	Same
6.	Pain & Sufferings	Rs.1,00,000/-	Rs.1,50,000/-
7.	Loss of Enjoyment of Life and Amenities	Rs.70,000/-	Rs.1,00,000/-
8.	Loss of Future Salary	NIL	Rs.25, 27, 200/-
9.	Mental and Physical Shock	Rs. 30,000/-	Rs.50,000/-
10.	Disfigurement	NIL	Rs.30,000/-
TOTAL COMPENSATION		Rs.13,61,394/- rounded of to Rs.13,62,000/-	Rs.39,48,394/- rounded of to Rs.39,50,000/-

23. The total amount of compensation granted to the Appellant thus, comes to Rs.39,50,000/- along with interest @ 9% per annum as per the



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terms of the Award dated 01.08.2019.

24. The Appeal is accordingly disposed of along with pending Application(s) if any

**(NEENA BANSAL KRISHNA)
JUDGE**

NOVEMBER 5, 2024

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