

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

+ **MAC.A. 325/2012**

% Judgment reserved on: 19<sup>th</sup> March, 2013  
Judgment delivered on: 4<sup>th</sup> April, 2013

CHATURBHUJ

..... Appellant

Through: Mr. Vijay Wadhwa, Adv.

versus

KAILASH & ORS.

..... Respondents

Through: Mr. Kamal Sharma, Adv. for  
R2.

Mr. Sameer Nandwani, Adv. for R3.

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KAIT**

**SURESH KAIT, J.**

1. Instant appeal has been preferred against the impugned award dated 16.12.2011 whereby ld. Tribunal has granted compensation in favour of the appellant and against the respondents, i.e., owner / insurance company.

2. Vide the instant appeal, appellant is seeking enhancement on the ground that he was confined to hospital for a period of 29 days as he was admitted in the Safdarjung Hospital on 24.12.2009 and discharged on 21.01.2010 and thereafter, he followed OPD as per the advice of the Doctor and due to which he had suffered loss of income for the said period. However, ld. Tribunal has not granted even a single penny towards compensation for loss of income to the appellant.

3. On perusal of impugned judgment and trial court record, it is revealed that Id. Tribunal has framed a issue “whether appellant / petitioner was entitled to claim compensation, if so, by whom the same shall be payable”.

4. On this issue, it is recorded by the Id. Tribunal that nothing was brought on record by the appellant / claimant to prove his claim that he is self-employed and was making envelopes and selling the same to shopkeepers. He also failed to prove on record that from the said working he was earning Rs.4,500/- per month. Therefore, Id. Tribunal has considered the income of the appellant for a sum of Rs.3,953/- per month minimum wages applicable at the time of the accident.

5. The appellant had suffered 46% permanent physical disability in relation to his left lower limb as per the Certificate Ex.PW2/A and the condition of the appellant was non-progressive, i.e., not likely to be improved.

6. As rightly pointed out by the Id. Counsels appearing on behalf of the respondents that as per the record appellant was 75 years of age. Therefore, keeping in view the age of the appellant / claimant, his disability and minimum wages prescribed at the time of accident, Id. Tribunal held him entitled to the loss of income to the extent of Rs.1,000/- per month.

7. By taking into consideration, the age of the appellant, multiplier of 5 has been applied by the Id. Tribunal and loss of earning capacity has been assessed as Rs.60,000/-.

8. As the appellant has received continuous treatment extending over a period of nearly 1 year, therefore, Id. Tribunal has considered the pain and sufferings undergone by the appellant during this period and granted him a sum of Rs.75,000/- as compensation.

9. Age of the appellant was 75years and no proof has been placed on record regarding his earning. It is rightly pointed out by the counsels for the respondents that at the age of 75 years no multiplier should have been applied, however, Id. Tribunal has granted compensation on a higher side. Moreover, the appellant proved the medical bills for Rs.43,000/-, but, Id. Tribunal has granted compensation of Rs.45,000/- to this effect.

10. So far as the compensation for attendant is concerned, the appellant has failed to produce proof of any payment made to any one or has examined any witness, who has received the amount for payment of the attendant.

11. I note, compensation has been granted to him for conveyance engaged by the appellant during the period of treatment.

12. In view of the above discussion, I find no merit in the instant appeal.

13. Consequently, the same is dismissed with no order as to costs.

**SURESH KAIT, J**

**APRIL 04, 2013/Jg**