

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

Reserved on : 18.11.2022

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Pronounced on : 24.05.2023

+ **MAC.APP. 10/2019**

HARIPAL & ORS

..... Appellants

Through: Mr. Sunil Kr. Verma, Advocate
(through VC)

versus

HDFC ERGO GENERAL INSURANCE CO LTD & ORS

..... Respondent

Through: Mr. Sameer Nandwani and Mr. Rohin
Singh Pande, Advocates for R-1.

+ **MAC.APP. 15/2019**

RAJEEV KUMAR

..... Appellant

Through: Mr. Sunil Kr. Verma, Advocate
(through VC)

versus

HDFC ERGO GENERAL INSURANCE CO LTD & ORS

..... Respondents

Through: Mr. Sameer Nandwani and Mr. Rohin
Singh Pande, Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. The present appeals have been filed under Section 173 of the Motor Vehicle Act, 1988 against the Award dated 03.10.2018 for enhancement of the compensation award.

2. In brief, the facts of the case are that Pitesh @ Hitesh along with Nandlal and Rajeev Kumar were coming from Manesar towards Delhi by truck bearing No. DL IM 4988, being driven by Rajeev Kumar. When they arrived at Atlas Chowk in Udyog Vihar, Gurgaon, another truck, bearing the number HR 55J 2806, which was travelling ahead of their vehicle, suddenly stopped due to failure of excels. Subsequently, the victim's truck collided with the said truck. Thereafter another truck i.e. offending vehicle bearing number HR 38 S 9138 suddenly arrived from the IFFCO chowk, Gurgaon side at very high speed and was driven in a rash and negligent manner, hit the above-mentioned victim's truck DL IM 4988 from the back side. As a result, Pitesh @ Hitesh and Rajiv Kumar sustained injuries were taken to the hospital, where Pitesh @ Hitesh was declared brought dead and Rajeev Kumar sustained injuries.

3. I have heard the learned counsel for the appellants – claimants in MAC. APP 10/2019 and appellant (injured) in MAC. APP. 15/2019 as well as learned counsel appearing on behalf of respondent no. 1/Insurance Company and have perused the material available on record.

4. It is submitted by learned counsel appearing for the appellants that learned Tribunal has erred in considering the deceased as an unskilled person while granting the compensation. It is further submitted that learned Tribunal has ignored the fact that deceased had completed class 10th and could not be characterised as unskilled. It is further submitted that the deceased was the only son of the appellants/claimants and they were dependent on the deceased. It is further submitted that learned Tribunal has

awarded a meager amount on account of death of the son of appellants/claimants, hence it is prayed that the amount be enhanced.

5. It is submitted by the counsel for the injured appellant that the learned Tribunal erred in determining the injured appellant's monthly income at Rs. 8,554/- by classifying him as unskilled. It is further submitted that the appellant (injured) was earning Rs.14,000/- per month as salary and was getting Rs.4000/- per month extra for food and other miscellaneous expenses. It is further submitted that the appellant (injured) is a matriculate driver who had a significant amount of experience, so he cannot be deemed unskilled. It is further submitted that the appellant (injured) has lost his left hand and sustained 80% permanent disability due to which he could not do any type of work in future and learned Tribunal has awarded a sum which is on lesser side. It is further submitted that appellant (injured) was 24 years old at the time of the accident and has a family to support.

6. On the other hand, it is submitted by learned counsel for the respondent no. 1 – Insurance Company that learned Tribunal has rightly passed the Award and there is no error in granting the compensation, however, the learned Tribunal has granted the compensation on the higher side. It is further submitted that appellants/claimants did not bring any document to show that the deceased was Class 10th passed and the only document which was produced before this Court was school leaving certificate. It is further submitted that learned Tribunal has further awarded the appellant (injured) a sum of Rs. 5,90,000/- towards implantation of artificial limb (elbow prosthesis). It is further submitted that since no

document was presented to the tribunal to prove the income of the deceased and the injured, the learned tribunal was inclined to take minimum wages of an unskilled as indicative of their income.

7. In these connected appeals, a bare perusal of the impugned Award dated 03.10.2018 shows that the learned Tribunal has dealt with each and every issue in great detail. As far as the contention of the learned counsel for the appellants with regard to the deceased being skilled is concerned, no document was produced either before the learned Tribunal or before this Court and mere school leaving certificate, produced before this Court, is not sufficient to prove that the deceased was Class 10th pass and can be considered as skilled. I have also perused the observations made by the learned Tribunal with respect to the income of the deceased and the injured which reads as under:-

“In the instant case, it is being submitted on behalf of the petitioners that at the time of the accident, deceased Pitesh @ Hitesh was working as conductor and was earning Rs.10,000/- pm, however no evidence, documentary or otherwise, regarding the said employment or income of the deceased have been brought by the petitioner and in absence, thereof, the minimum wages prescribed during the relevant period, i.e Rs. 8,554/-p.m is taken as criteria for calculating the loss of dependency in the instant case.”

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29. LOSS OF INCOME

“In the present case, the petitioner/injured stated that he was working as a driver and was earning Rs. 15,000/- p.m at the time of accident, however, no documentary evidence in this regard has been placed on record and in absence thereof, the minimum wages during

the relevant period i.e Rs. 8,554/- p.m is taken as criteria for calculating the loss of income to the petitioner/injured.”

Hon’ble Supreme Court in ***Gurpreet Kaur and others versus United India Insurance Company and others CIVIL APPEAL Nos.6981-82 OF 2022*** has noted that the Notification of Minimum Wages Act can be a guiding factor only in a case where there is no clue available to evaluate monthly income of the deceased, and in present case there are no documents produced to prove the income of the deceased as well the injured or for that matter any other evidences. Therefore, this contention of the learned counsel for the appellants has no force in it and is hereby rejected.

8. As far as the contention of the learned counsel for the appellant with regard to appellant (injured) losing his left hand and permanent disability of 80% is concerned, the learned Tribunal has granted further compensation apart from the awarded amount for implantation of artificial limb, the relevant portion reads as follows:-

“37. **ARTIFICIAL LIMB**

In the instant case, petitioner/injured has suffered above elbow amputation left side and as per Disability Certificate dated 10.10.2014 (Ex. PW- 1/1) issued by DDU Hospital, New Delhi, the petitioner/injured Rajiv Kumar has 80% permanent physical disability in relation to left upper limb. Further, the petitioner/injured has placed on record estimate for prosthetics (Ex. PW-2/1) from Total Prosthetics and Orthotics India Pvt. Ltd., Chhatarpur Hills, Delhi wherein it has been recommended that petitioner/injured would require Lt. Above Elbow Prosthesis with double walled laminated socket with suction valve with steeper myoelectric hand with gloves and mechanical elbow with control cable /harness system for additional suspension and functional comfort.

As per the above-said document (Ex. PW-2/1), the estimate cost /price for the above-said prosthetics system qua petitioner/injured Rajiv Kumar would be Rs. 5,90,000/- . In these circumstances and having regard to the fact and circumstances of the present case and in view of his physical/ medical condition, the petitioner/injured Rajiv Kumar shall be entitled to the above-said amount i.e Rs. 5,90,000/- (Rupees Five Lacs, Ninety Thousand only) for the implantation of afore-said artificial limb (Elbow Prosthesis). ”

9. Admittedly, at the time of the alleged incident deceased and the injured were travelling in a truck bearing No. DL-1M4988. Both the parties, during the trial, have produced the witnesses in support of their respective case and learned Tribunal has thoroughly analyzed the statements of the witnesses.

10. In the case of ‘**K. Suresh v. New India Assurance Co. Ltd.**’ reported in (2012) 12 SCC 274, the Hon’ble Supreme Court of India while observing that Tribunal and Courts have to be broad based in computing compensation has held as under:-

*“10. It is noteworthy to state that an adjudicating authority, while determining the quantum of compensation, has to keep in view the sufferings of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned. **Hence, while computing compensation the approach of the Tribunal or a court has to be broad-based. Needless to say, it would involve some guesswork as there cannot be any mathematical exactitude or a precise formula to determine the quantum of compensation.** In determination of compensation the fundamental criterion is of “just compensation” should be in heard.*

11. Looking into the entire circumstances, this Court is of the opinion that quantum of compensation granted by learned Tribunal is just and proper and has been granted in terms of assertions made by Hon'ble Supreme Court in various judicial precedents.

12. In view of the above, I find no infirmity in the Award dated 03.10.2018 passed by the learned Tribunal, therefore, the appeal is dismissed maintaining the Award of the learned Tribunal.

RAJNISH BHATNAGAR, J

MAY 24, 2023

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