



2025:DHC:313



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

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*Reserved on: 18th October, 2024
Pronounced on: 21st January, 2025*

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MAC APP.28/2024

JAGDISH SHARMA

S/o Late Ganga Sahai Sharma
R/o RZG-164, Vishwash Park,
Gali No.10, Raja Puri,
Uttam Nagar, West Delhi-110059.

..... Appellant

Through: Mr. Pankaj Gupta, Advocate.

versus

1. **NAVTEJ SINGH**

S/o Chattar Singh
R/o village Man Karola,
Distt. Bulandshahr, U.P.

2. **MOOLENDRA KUMAR**

S/o Hoshiyar Singh
R/o Badshahpur Pachgai,
P.S. Sikarpur,
Distt. Bulandshahr, U.P.

3. **NATIONAL INSURANCE CO. LTD.**

2E/25, Jhandewalan Extns., IIIrd Floor,
New Delhi.

.....Respondents

Through: Mr. Manoj R. Sinha and Mr. Vishal
Agrawal, Advocates for R-3-National
Insurance Co. Ltd.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA



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JUDGMENT

NEENA BANSAL KRISHNA, J.

1. An Appeal under *Section 173* of the *Motor Vehicles Act, 1973* has been filed by the injured Sh. Jagdish Sharma seeking enhancement of the Compensation granted in the sum of Rs.16,86,358/- along with interest @ 9% per annum, vide Award dated 25.02.2023, on account of injuries suffered by him in road accident on 08.05.2016.

2. The Appellant/Petitioner had suffered right hip disarticulation with Permanent Disability of 90% in relation to right lower limb and also amputation of leg. He was working as a Carpenter and earning Rs.3,03,096/- per annum which is proved by his Income Tax Returns.

3. The *grounds* on which *enhancement of compensation is sought* are as under:

(i) that the Loss of Income during treatment has not been granted;

(ii) that because of disability he is unable to pursue his profession and future Loss of Future Earnings has been erroneously denied;

(iii) that the compensation under the *Non-Pecuniary Heads* and the compensation given for *Future Conveyance* needs to be enhanced; and

(iv) that no compensation has been awarded under the head of Mental and Physical Shock, Loss of Amenities of Life,



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Disfiguration, Cost for Repair and Maintenance of Prosthetic Limb, Expenditure.

4. *Learned counsel for the Insurance Company* has submitted that the learned Tribunal has made reasonable assessment of all the facts and has granted reasonable compensation. The Award does not merit any interference.

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

6. *Briefly stated*, on 08.05.2016 the injured Shri Jagdish Sharma was driving his motor-cycle bearing registration No. DL-9-SB-7015 on which his mother Smt. Chandrawati was sitting as pillion rider, from Bulandsahar to Satwara, P.S. Ahmadgarh. His motor-cycle was on the kachcha portion of the road, when it was hit by the vehicle bearing No. UP-13-AL-1314 which came from the opposite direction at a high speed and was being driving in a rash and negligent manner. Both the injured and his mother, were taken to Babu Barsi Dass District Hospital, Bulandsahar, where during the treatment Smt. Chandrawati died, while Shri Jagdish suffered grievous injuries. He was subsequently shifted to Safdarjung Hospital, Delhi where he remained admitted from 09.05.2016 to 18.06.2016 and also suffered amputation of right lower limb.

7. FIR No. 173/2016 under Section 279/337/338/304A IPC at P.S. Jahangirabad, was registered. On completion of investigation, Chargesheet was filed in the Court. The Claim Petition under Section 166/140 Motor Vehicle Act was filed before the Tribunal for claiming the Compensation.



Loss of Income during the treatment period:

8. The *first grievance* of the Appellant is that no compensation qua *Loss of Income during the treatment period* has been granted to him. The injured Jagdish in his Affidavit of Evidence Ex.PW3/A had deposed that at the time of accident he was 48 years old and was working as a Carpenter and having his own shop under the name and style of ‘Sharma Wooden Work’, Moti Nagar, Delhi and was earning Rs.3,03,096/- per annum. In his cross-examination, the injured admitted that he was the owner and involved in the business of purchase and sale of wood and that he was not a Carpenter by profession. He further admitted that his son was working at his shop for a period of two months while he was admitted in the hospital.

9. Considering the testimony of the injured, the learned Tribunal concluded that being the owner of the shop, his shop remained functional and there was no proof of he having suffered any economic loss.

10. To appreciate this assertion, it is pertinent to first refer to the nature of injuries suffered by him. As per the medical record of the injured Ex.PW3/1, he remained admitted in the hospital from 09.05.2016 to 18.06.2016 and was diagnosed with “**Open Grade II C Fracture Right Segmental Femur with Fracture both Bone Leg Vascular Surgery with Mess Sor 10**”. He had to suffer amputation of his right lower limb. He again got admitted to Safdarjung Hospital from 16.07.2016 to 30.07.2016 with the complaint of ‘*Right Hip Dis-articulation*’. As per his Disability Certificate Ex.PW4/A, he had suffered *Permanent Physical Disability of 90% in relation to his right lower limb*.



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11. The injured thus, suffered extensive injuries which not only led to his prolonged treatment, but also amputation of his right lower limb. His hospitalization has been twice from May till 30.07.2016. Not only this, with the nature of injuries it is quite evident that he would have had to compulsorily take follow up treatment. The injured continued to visit the OPD at Safdarjung Hospital thereafter and the last OPD Card is dated 06.07.2017 which mentions that the patient was using axillary crutches and had been recommended *Physiotherapy and medication for a month*. From the OPD of July, 2017 it is evident that it was a visit to the hospital for rehabilitative treatment.

12. *It can be reasonably assessed that the injured would not have been able to manage and supervise his business at least for fourteen months.*

13. As per his own admission in the cross-examination, his son may have remained available on the shop and prevent it being shut down but that in itself, cannot be a circumstance to conclude that the business was running as normal. The expertise of the Appellant was definitely missing and he would not have been able to concentrate on his business because of the extensive injuries.

14. The injured examined PW2/Shri Hitender, Tax Assistant from the Income Tax Department, who proved the ITR's of the injured for the Assessment Years 2013-14, 2014-15 and 2015-16, Ex.PW2/2, Ex.PW2/3 and Ex.PW2/4 respectively.



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15. The Id. Counsel on behalf of the Insurance Company had argued that though the injured had claimed that he had to stop his business after the accident, but the best evidence to corroborate this would have been the Income Tax Returns for subsequent years, but he has failed to do so leading to an inevitable conclusion that he has continued with his business.

16. According to the injured, he was unable to produce his ITRs for the subsequent years since he was unable to continue with his business. However, as per his own admission it was a running shop of Sale and Purchase of Wood and there is no documentary proof of the business having been shut down by the Appellant. It cannot be accepted that he had to close his business or that his earnings dwindled.

17. His income on the basis of his ITR of the year 2015-16 reflects an income of Rs.3,03,096/- per annum, which can be taken as the basis to calculate his Loss of Income, while he remained under the treatment i.e. fourteen months. ***The Appellant is thus, awarded Rs.3,53,612/- as compensation towards Loss of Income during the period of treatment.***

Future Loss of Income: -

18. The *second aspect* on which the Award has been challenged is that no compensation for Future Loss of Income has been awarded despite he having suffered *Permanent Disability to the extent of 90% in relation to right lower limb on account of amputation*. While it is correct that the injured essentially was running his business of Sale and Purchase of Wood, but it cannot be overlooked that business requires not only marketing and travel but also the



constant supervision and presence in the shop. With the kind of disability suffered by him, it is evident that his earning capacity would have taken a dent which, having regard to the nature of Permanent Disability and his occupation, *can be taken as 40% of Functional Disability.*

19. He was 57 years old at the time of accident. *In the circumstances, multiplier of 7 is applicable. His Loss of Future Earning is calculated as Rs.8,48,668.80 (3,03,096 X 40/100 X 7), which is rounded off to Rs.8,50,000/-.*

Compensation For Repair and Maintenance of Prosthesis:

20. The *next ground* on which enhancement is sought is that despite having suffered amputation, *no compensation has been granted for repair and maintenance of Prosthesis.*

21. The Injured had examined PW1/Sh. Gaurav Sehgal, Sr. Prosthetist and Orthotist who proved the Quotation dated 04.08.2017 for the Prosthesis in the sum of Rs.4,60,950/- and deposed that it required replacement completely after about 4-5 years. The learned Tribunal considering that the injured was 57 years old and would require compensation for purchase and replacement of prosthesis on three occasions during his lifetime, awarded a sum of Rs.13,82,850/- (Rs.4,60,950 X 3) towards the cost of Prosthesis.

22. The learned Tribunal has already provided for replacement of the prosthesis in future, during the lifetime of the injured. Once, the complete replacement has been awarded, there is no reason for grant of maintenance or



repair of the prosthesis. *There is no ground for further modification of grant of compensation under this head.*

Compensation under Non-Pecuniary Heads:

23. The Appellant has further claimed that the compensation under Non-Pecuniary Head, is required to be enhanced.

Loss of Amenities of Life & Disfiguration: -

24. The Injured/Appellant has suffered grievous injuries in the Accident and as a result has lost a limb. The nature of injury and the resultant disability has necessarily led to a loss of amenities of life and the same is required to be compensated, therefore *the Appellant is awarded compensation for loss of amenities to the tune of Rs.50,000/- and for disfiguration a sum of Rs.30,000/-.*

The enhanced compensation is calculated as under: -

Sr. No.	Heads of Compensation	Compensation awarded by the Tribunal	Compensation Awarded/Modified by this Court
1.	Medical Treatment	Rs.13,508/-	Rs.13,508/-
2.	Pain & Suffering	Rs.2,00,000/-	Rs.2,00,000/-
3.	Loss of Income during the period of Treatment	NIL	Rs.3,53,612/-
4.	Loss of Future Earning	NIL	Rs.8,40,668.80/-
5.	Conveyance/Attendant Charges/Special Diet	Rs.90,000/-	Rs.90,000/-



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6.	Cost of Prosthesis	Rs.13,82,850/-	Rs.13,82,850/-
7.	Loss of Amenities of Life	NIL	Rs.50,000/-
8.	Disfiguration	NIL	Rs.30,000/-
TOTAL COMPENSATION		Rs.16,86,358	Rs.29,60,638.80

Relief: -

25. Hence, the **total Compensation** awarded to the Appellant is enhanced to **Rs.29,61,000/-** along with interest @ 9% per annum as per the terms prescribed in the Award dated 25.02.2023.

26. The Appeal is accordingly allowed and disposed of along with the pending Application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 21, 2025
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