



2025:DHC:54



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

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*Reserved on: 07th October, 2024
Pronounced on: 08th January, 2025*

+ **MAC.APP. 94/2020 & CM APPLs. 6976/2020, 6977/2020**

HARISH KUMAR MITTAL

S/o Late Satish Kumar
R/o U-1/26, Budh Vihar
Phase-I, Delhi.

.....Appellant

Through: Mr. Himanshu Jawa, Advocate.

versus

1. NATIONAL INSURANCE CO. LTD.

124, Jeevan Bharti Building,
Cannaught Place, New Delhi-01

.....Respondent No.1

2. BHOLA RAM

S/o Sh. Suva Lal,
R/o Village Lulwa, Masuda,
Distt Ajmer, Rajasthan

.....Respondent No.2

3. MANJU DEVI

W/o Sunil Kumar
R/o C-39 Aggarsen Bhawan, Ajmer Road
M.G. Kishan Garh, Rajasthan

.....Respondent No.3

Through: Mr. Arihant Jain, Mr. Mayank
Advocate for R1.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J

1. The Appeal under *Section 173* of the *Motor Vehicles Act, 1988* has been filed on behalf of the Appellant/injured Harish Kumar Mittal seeking enhancement of the compensation granted in the sum of Rs.1,20,580/- along



with interest @ 9% per annum on account of injuries suffered by him in a road accident on 15.11.2013, *vide* Award dated 27.02.2018.

2. The main grounds on which enhancement of compensation is sought are:

- (i) that Loss of Income and Earning Capacity has not been calculated correctly;
- (ii) that the compensation granted Non-Pecuniary Heads needs to be enhanced;
- (iii) that the attendant charges have not been given; and
- (iv) that compensation for future treatment be also given.

3. Learned counsel on behalf of the Insurance Company, however, has contended that the compensation has been assessed fairly by the Tribunal and merits no interference.

4. **Submissions Heard. Record perused.**

5. *Briefly stated*, on 15.11.2013 at about 9 AM, injured, Harish Kumar Mittal along with his wife, Smt. Soniya, mother/Santosh and Grandmother/Smt. Geeta, Abhishek and minor Daughter/Shreya were travelling in Santro Car which was being driven by one Manish. When the car reached Sampla, Jhajjar, Haryana a Tralla bearing No. RJ-36GA-2321 which was coming from the opposite side at a high speed and was being driven by Sh. Bholu Ram in a negligent manner, hit the car. As a consequence, Soniya, Manish and Geeta died on the spot while the other occupants including the Appellant suffered grievous injuries. The Appellant remained under treatment in various hospitals for about a month and suffered *Permanent Physical Disability of 50% on account of severe head injury and 20% Permanent Disability for disc herniation*. His disability has



still not been cured and has been advised continuous treatment in hospital.

Loss of Income:

6. The *first* ground of challenge is the Loss of Income He was an employee of Indian Airforce and was posted as a CPL and drawing a salary of Rs.30,000/- per month. To prove the salary, he examined Dr. Dharmender Dabhi, CPL, Air Force Station, Narela, Delhi who proved the Salary Slip of the injured and also produced the Leave record.

7. The Appellant, however, has placed on record the medical documents of 2019-2020 which are essentially on account of irritation and itching in the eyes which has no co-relation with the injuries suffered by him in the accident, on 15.11.2013. The learned Tribunal, therefore, has rightly observed that he had remained under treatment for one month. However, because it was medical leave for which he suffered no Loss of Income, no compensation for Loss of Income on account of Leave, was granted.

8. However, it cannot be overlooked that even though the medical leave availed by the Appellant was with pay, but it is his medical leave which had to be exhausted on account of the injuries which would otherwise, have been available to him to be utilized in future contingency. The Appellant is entitled to reimbursement of his one month's salary for which he remained on medical leave. ***He is, therefore, awarded Rs.30,000/- towards Loss of Income.***

Loss of Earning Capacity:

9. The Appellant has also sought compensation on account of *Loss of Earning Capacity*. The Appellant has claimed that he has suffered physical permanent disability of 50% qua the head injury and 20% qua his disc herniation. However, no medical document has been placed on record to



prove that he suffered from any Permanent Physical Disability. There is nothing to show that he suffered any kind of loss of earning capacity because of the injuries suffered by him or the consequent loss of Income or the Earning Capacity. ***Therefore, the Appellant is not entitled to any compensation under this head.***

Attendant Charges:

10. The Appellant has sought *attendant charges* but for the aforesaid reasons and considering that the nature of injury was not of a kind that he required an attendant, ***no compensation can be granted under the head of attendant charges.***

Non Pecuniary Heads:

11. The Appellant has been granted compensation in the sum of Rs.25,000/- for Pain and Suffering. Considering that it is an accident of 2013 and also the nature of injuries, ***no further enhancement in the compensation on this account, is required.***

12. For *Conveyance and Special Diet*, the Appellant has been granted Rs.15,000/- each i.e. Rs.30,000/- total. As per the record, he remained under treatment for about one month; ***consequently the compensation so awarded does not merit any interference.***

13. The Appellant also claimed the compensation on account of *permanent disfiguration and Future Treatment* but in the absence of any evidence establishing ***the requirement of Future Treatment or that there was any disfiguration, no compensation can be granted under this head.***

Relief:

14. In the light of above discussion, ***the compensation amount is enhanced to Rs.1,50,580/- (Rs. 1,20,580/- + Rs.30,000/-) along with***



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interest @ 9% per annum.

15. The compensation amount be deposited by the Insurance Company within 30 days after which the same be disbursed to the Appellant/Claimant.

16. The Appeal is accordingly disposed of.

**NEENA BANSAL KRISHNA
(JUDGE)**

JANUARY 08, 2025

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