



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

Pronounced on: 19th February, 2025

+ **MAC. APP. 103/2020**

MEENUAppellant

W/o Late Dinesh Kumar,
R/o E-16, 970, Tank Road,
Karol Bagh, New Delhi.

Through: Mr. S.N. Parashar, Advocate.

versus

1. **SH. AZAD CHAUHAN** (Driver)

S/o Sh. Radhya Shyam Chauhan,
R/o Village Patti Chakeshar,
District Jaunpur, U.P.

2. **SMT. RAJ RANI ARORA** (Owner)

W/o Sh. Harish Arora,
R/o H.No. 190,
Raja Garden, New Delhi

3. **UNITED INDIA INS. CO. LTD.** (Insurance Company)

At: 10203, Jamuna House,
Padam Singh Road, Karol Bagh, DelhiRespondents
Through: Mr. Manoj Bhandari, Advocate for
R2.

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* ('M.V. Act' *hereinafter*) has been filed on behalf of the Appellant/Injured for enhancement of the compensation awarded *vide* impugned Award dated 16.03.2019 on account of injuries suffered by her in the road accident on 31.07.2017.

2. ***Briefly stated***, the facts of the case are that on 31.07.2017, the injured/appellant Meenu along with other persons were going on religious Tour in the offending bus bearing No. DL-1VA-8576 which was being driven by the respondent No. 1 in a rash and negligent manner. At about 2.15 AM, when they reached near Sainpura Hansi, NH-9, the driver lost control over the bus because of the high speed and hit against the pavement and overturned. The Appellant and the other passengers sustained grievous injuries.

3. Appellant got admitted in the RML Hospital from 01.08.2017 to 21.08.2017. Thereafter, she took treatment in Apollo Hospital from 29.08.2017 to 07.09.2017, 03.10.2017 to 06.10.2017, 22.12.2017 to 25.12.2017 and at BLK Hospital from 23.05.2018 to 25.05.2018. The Appellant suffered fracture of right shaft femur, pubic rami fracture and malleolar lesion right. As per the Discharge summary, she was diagnosed as degloving injury on right thigh, post traumatic raw area right thigh. Because of the said injuries, she suffered *permanent disability to the extent of 74% in relation to her right lower limb*.

4. FIR No. 536/2017 under Sections 279/304A/337 IPC was registered at P.S. Chowki Hansi, Hissar, Haryana against the respondent



No. 1. The Bus was registered in the name of respondent No. 2 and insured with respondent No. 3.

5. The Claim petition under Sections 166 and 140 of the M.V. Act was filed by the Appellant for claiming compensation.

6. The Appellant has sought enhancement of Compensation on the following Grounds:

- (i) that her permanent disability is 74% qua right lower limb and her functional disability has been taken as 30%, which should have been taken as 100%;
- (ii) that loss of future income has been calculated at minimum wages for unskilled worker, but should have been calculated for skilled worker; and
- (iii) that interest has been awarded @9% per annum but should have been 12%.

7. Ld. Counsel for the Insurance Company has contended that there is no infirmity in the impugned award and that the functional disability has been rightly assessed by the Ld. Tribunal.

8. **Submissions heard and record perused.**

Assessment of Income of the Injured:

9. The *first ground* of challenge to the impugned Award by the petitioner is that while the learned Tribunal had observed that the appellant being housewife was entitled to Minimum Wages applicable to skilled workers, but has taken the Minimum Wages for unskilled worker at Rs.11,830/- per month.



10. The Appellant had rightly contended that the Minimum Wages should have been taken for skilled worker as has been observed by the learned Tribunal itself. ***Therefore, the income of the appellant should have been taken as Rs.12,116/- per month.***

11. *Therefore, the compensation is recalculated by taking monthly income of the appellant as Rs.12,116/-.*

Loss of Income for 17 months:

12. *Accordingly, loss of income for 17 months is recalculated @ Rs. 12,116/- per month amounting Rs. 2,05,972/- (Rs. 12,116/- X 17) is awarded to her under this head.*

13. ***Loss of earning capacity: Rs. 12,116/- X 12 X 140/100 X 15 X 30/100 = Rs. 9,15,969.6/-***

14. *Accordingly, a sum of Rs. 9,15,969.6/- is awarded to her towards loss of earning capacity due to disability.*

Determination of Functional Disability:

15. The *second ground* of challenge is that the Appellant had suffered *Permanent Disability of 74% in relation to right lower limb* as per Disability Certificate, but her functional disability has been taken as 30% whereas it should have been taken as 100% to compute the future loss of income in view of the fact that she is still under treatment and facing problem in her day to day life and requires assistance for her daily works.

16. The learned Tribunal placed reliance in the case of *Raj Kumar Vs. Ajay Kumar and Another*, 2011 (1) T.A.C. 785 SC to observe that as per the Disability Certificate, the petitioner had sustained 74% permanent disability in relation to her right lower limb and thus, the petitioner was



not able to perform her duties as efficiently as she used to perform earlier. It was further observed that although the appellant is not a working lady, but it is not a case where she has not suffered any loss of earning capacity. Although the appellant may require some assistance to perform her duties, but her functional disability cannot be assessed as 100%, as claimed. Looking at her nature of work and the disability of right lower limb, it was taken as 30% qua the whole body, by the learned Tribunal.

17. The permanent disability of 74% is limited to right lower limb and not to the whole body. There may be some functional disability but it is not as if the appellant has completely incapacitated from discharging her duties.

18. *Thus, the finding of the learned Tribunal that functional disability can be treated as 30% for assessing the loss of earning capacity, does not merit any interference by this Court.*

Rate of Interest:

19. The *last ground* of challenge is that the interest @9% has been granted on the lower side. The interest awarded by the learned Tribunal has been granted at 9%, there is no cogent explanation given for seeking enhancement of the rate of interest and, *therefore, it does not merit any interference.*

Relief:-

20. Accordingly, the compensation is re-calculated as under:-

S. No.	Heads	Granted by the Tribunal	Final Amount granted by this court



1.	Total Loss of Income	Rs. 2,01,110/-	Rs. 2,05,972/-
2.	Medical Expenses	Rs. 4,45,069/-	Rs. 4,45,069/-
3.	Pain and Suffering	Rs. 50,000/-	Rs. 50,000/-
4.	Conveyance Charges	Rs. 20,000/-	Rs. 20,000/-
5.	Special Diet	Rs. 30,000/-	Rs. 30,000/-
6.	Attendant Charges	Rs. 30,000/-	Rs. 30,000/-
7.	Loss of earning capacity due to disability	Rs. 8,94,348/-	Rs. 9,15,969.6/-
6.	Mental and Physical Shock	Rs. 1,00,000/-	Rs. 1,00,000/-
7.	Loss of Amenities and Enjoyment of life	Rs. 20,000/-	Rs. 20,000/-
8.	Loss of inconvenience/hardship/disappointment/mental stress	Rs. 50,000/-	Rs. 50,000/-
	TOTAL COMPENSATION	Rs. 18,40,527/-	Rs. 18,90,000/- (rounded off)

Relief:

21. In view of the above, the Claimants are awarded total compensation of **Rs. 18,90,000/-** along with interest @9% per annum from the date of filing of the petition till realization, to be disbursed in terms of the Award dated 16.03.2019. The respondent No.3- United India Insurance Company Ltd. is directed to deposit the enhanced Awarded amount within 30 days with the learned Tribunal.

22. With aforesaid directions, the Appeal along with pending Application(s) is accordingly disposed of.

2025:DHC:1073



**(NEENA BANSAL KRISHNA)
JUDGE**

FEBRUARY 19, 2025

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