

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. _____ of 2022
(arising out of SLP(C) Diary No(s) 10658/2019)

KALAM @ KALAMUDDIN

Appellant(s)

VERSUS

DINESH & ORS.

Respondent(s)

O R D E R

1. Leave granted.

2. The appellant is before this Court assailing the judgment dated 05.10.2018 passed by the High Court of Delhi at New Delhi in MAC. APP. 288/2013.

3. The only issue for consideration in the instant appeal is with regard to the quantum of compensation. The accident, having occurred on 13.08.2009 and the appellant was aged about 35 years at the time of the occurrence of the said accident and was working as a labourer, having suffered injuries leading to the disability, is not in dispute.

4. On other aspects of the matter, the Motor Accidents Claims Tribunal ('MACT' for short) as well as the High Court have adverted to, and the MACT at the first instance, had awarded a compensation of Rs. 6,12,261/- (Rupees Six Lakhs Twelve Thousand Two Hundred and Sixty One Only) with interest at 7.5% per annum through its award dated 07.11.2012. The High Court, having enhanced the compensation on the conventional heads, had arrived at the figure of Rs.7,67,809/- (Rupees Seven Lakhs Sixty Seven Thousand Eight

Hundred and Nine Only) and awarded the same with interest at 9% per annum through its judgment dated 05.10.2018.

5. In that circumstance, while looking into all aspects of the matter, we note that the only issue for consideration is with regard to the appropriate percentage of disability to be considered herein, for award of compensation and the shortfall, if any, under the conventional heads.

6. In so far as the disability factor is concerned, the evidence, as tendered by the Doctor and noted by the Courts below, is at 57%.

7. The learned counsel for the appellant would contend that keeping in view the nature of employment of the appellant, who was a manual labourer, the injuries suffered to both the lower limbs would literally make the appellant disabled to carry out any kind of physical labour and as such, the disability in the instant case is required to be noted at 100%.

8. The learned counsel for the respondent-Insurance Company would however, vehemently dispute the said contention/position and with reference to the settled law, would contend that the disability, as reckoned by the High Court is justified and no modification is necessary.

9. However, having adverted to the facts in the instant case, as already noted, though the disability to the body has been assessed at 57%, it is necessary to take into consideration the functional disability of the appellant in the present facts and circumstances of the case. As noted, the appellant was a manual labour and the nature of injuries suffered is to both his lower limbs and as such, the appellant would not be in a position to undertake a similar

employment as manual labour. However, this would also indicate that the disability cannot be considered at 100% since, the appellant would be in a position to earn his livelihood to some extent in any other capacity. Further, the discomfort in life of the appellant is also to be kept in view and in that view of the matter, we find it appropriate to assess the disability at 75% in the peculiar facts of this case.

10. If the said disability of 75% is reckoned and the income as reckoned by the High Court as well as by the Tribunal at Rs. 3,953/- (Rupees Three Thousand Nine Hundred and Fifty Three Only) per month is taken into consideration, the appellant would also be entitled to the addition of future prospects at 40%, which would be in a sum of Rs. 1,581/- (Rupees One Thousand Five Hundred and Eighty One Only) per month. Thus, the total income of the appellant, if multiplied on the annual basis with the multiplier of '15', the total amount of compensation would be in a sum of Rs. 9,96,120/- (Rupees Nine Lakhs Ninety Six Thousand One Hundred and Twenty Only). Since, we have indicated that the disability to be taken at 75%, the amount to the extent of 75% of the same is awarded which is in a sum of Rs. 7,47,090/- (Rupees Seven Lakhs Forty Seven Thousand and Ninety Only) less the sum of Rs.5,67,809 (Rupees Five Lakhs Sixty Seven Thousand Eight Hundred and Nine Only) already awarded. In addition to the said, the appellant is also awarded a sum of Rs. 75,000/- (Rupees Seventy Five Thousand Only) apart from the amount on other heads awarded by the High Court to make good the shortfall towards his attendant charges and his future medical expenses.

11. Hence, the appellant is entitled to the further enhanced compensation of Rs.2,55,281/- (Rupees Two Lakhs Fifty Five Thousand Two Hundred and Eighty One Only) with interest at 7.5% per annum.

12. The enhanced compensation amount shall be deposited by the Insurance Company before the MACT within a period of six weeks from the date of receipt of a copy of this judgment.

13. In terms of the above, the appeal is disposed of.

14. Pending application(s), if any, shall stand disposed of.

.....J.
(A.S. BOPANNA)

.....J.
(PAMIDIGHANTAM SRI NARASIMHA)

New Delhi
20th October, 2022

ITEM NO.19

COURT NO.12

SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 10658/2019

(Arising out of impugned final judgment and order dated 05-10-2018 in MACA No. 288/2013 passed by the High Court Of Delhi At New Delhi)

KALAM @ KALAMUDDIN

Petitioner(s)

VERSUS

DINESH & ORS.

Respondent(s)

([MACT MATTER]

IA No. 68952/2019 - CONDONATION OF DELAY IN FILING
 IA No. 68953/2019 - PERMISSION TO FILE ADDITIONAL
 DOCUMENTS/FACTS/ANNEXURES)

Date : 20-10-2022 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.S. BOPANNA
 HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA

For Petitioner(s) Mr. Partap Singh, Adv.
 Mr. Ashutosh Yadav, adv.
 Mr. Arun Yadav, Adv.
 Mr. Rajiv Kumar, Adv.
 Mr. G.D. Kaushik, Adv.
 Mr. Raman Mudgal, Adv.
 M/s. Bhagirath, Adv.
 M/s Jaswinder, Adv.
 Mr. Yadav Narender Singh, AOR

For Respondent(s) Mr. S.K. Sharma, Adv.
 Ms. Neetu Sharma, Adv.
 Mr. Nitin Pal, Adv.
 Ms. Muskan Jain, Adv.
 Mr. Krishan Kumar, AOR

Mr. Navneet Kumar, Adv.
 Mr. Saurabh Tiwari, Adv.
 Mr. Antarik Chakrobarty, Adv.
 Mr. Parijat Kishore, AOR

**UPON hearing the counsel the Court made the following
O R D E R**

Delay condoned.

Leave granted.

The appeal is disposed of in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

**(NISHA KHULBEY)
SENIOR PERSONAL ASSISTANT**

**(DIPTI KHURANA)
ASSISTANT REGISTRAR**

(signed order is placed on the file)