

**(2012) 01 RAJ CK 0027**

**In the Rajasthan High Court**

**Case No : Civil Miscellaneous Appeal No. 543 of 2005**

Narendra Singh

APPELLANT

Vs

Shri Nishant Sharma and Another

RESPONDENT

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**Date of Decision :** 02-01-2012

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 6

**Citation :** (2012) 3 WLN 125

**Hon'ble Judges :** Mohammad Rafiq, J

**Bench :** Single Bench

**Advocate :** K.N. Tiwari, for the Appellant; Rajni Vyas, Advocate, for Respondent  
No.2 Insurance Company, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Mohammad Rafiq, J.—This appeal has been preferred by claimant dissatisfied with award dt. 19.11.2004 of learned Motor Accident Claims Tribunal (Additional District & Sessions Judge No.9), Jaipur City, Jaipur, in MAC Case No.93/2004 (122/2000), arising out of accident took place on 10.10.1998, in which appellant sustained 60% permanent disability on account of amputation of his right leg below knee. The appellant at the relevant time was a student. The Tribunal has awarded a sum of Rs.1,28,900/- as compensation, which includes the sum of Rs.1,10,000/- for permanent disability on account of amputation of right leg below knee, and remaining compensation was on other non-pecuniary heads. Contention of learned counsel for appellant is that appellant was a student of 22 years of age and that his entire life has been ruined because of amputation of his right leg below knee. The appellant was earning Rs. 2,000/- per month by imparting tuitions etc. and, side by side, he was prosecuting his further studies of graduation. The Tribunal has erred in law in not holding the income of the appellant to be proved. Even as per Section 6 of the Motor Vehicles Act, 1988, which was inserted in the Second Schedule, by Act No.54 of 1994 with effect from 14.11.1994, notional income for compensation to non-earning persons who

had no income prior to accident has to be accepted at Rs.15000/- per annum. In the present case there was evidence that the appellant was earning by way of imparting tuitions etc. and, therefore, his income ought to have been accepted at Rs.2000/- per month and on that basis the Tribunal should have computed the compensation. The award of Rs.5000/- on the head of pain and suffering in the case like this where appellant's right leg below knee has been amputated, cannot be said to be justified.

2. Learned counsel for the respondent opposed the appeal and submitted that the Tribunal has rightly not accepted the income of the appellant to be proved because there was no proof produced in evidence on that aspect. Merely on assertion of the appellant it could not be accepted that he was earning Rs.2000/- per month by imparting tuitions etc. Learned counsel submitted that compensation of Rs.5000/- on the head of pain and suffering was just and reasonable, keeping in view that the accident took place in the year 1998. The award therefore deserves no interference.

3. On hearing learned counsel for the parties and perusing the impugned award, I find that even if no documentary evidence about the income of the appellant was produced then also the oral assertion, made by the appellant in his statement that he was earning a sum of Rs.2,000/- per month by way of imparting tuitions, could not be ignored in absence of any rebuttal by respondent insurance company. Moreover, the fact remains that the appellant will have to survive with 60% permanent disability throughout his life and that permanent disability in one leg would continue to have its effect on his earning capability for rest of his life. The income of Rs.15,000/- per annum can be accepted in a case where there is no evidence of income, however, in the present case there is evidence, although it is another matter that the appellant was not able to produce any documentary evidence because in private tuitions normally no documents etc. are prepared. The Court has to proceed on assumption that the appellant was capable of earning at-least a sum of Rs.2,000/- per month by way of imparting tuitions etc. or otherwise doing any job because the compensation that has to be computed is valid for rest of life. Apart from that fact that the compensation that has to be computed is valid for rest of the life, it cannot be accepted that he would not have been earning anything in future and if he was capable of earning after sometime, his disability would certainly an impediment in his doing so. His income has to be accepted at Rs.2,000/- per month and on that basis the computation of compensation ought to be made taking the multiplier of 17 on the basis of his age to be 22 years as per the ratio of the judgment of the Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, The award of Rs.5,000/- on the head of pain and suffering for permanent disability of 60% on account of amputation of his right leg below knee also deserves to be enhanced to Rs.50,000/-. Calculating thus, the compensation for loss of future income would come to Rs.2,44,800/- ( $2000 \times 12 \times 17 \times 60/100$ ). The appellant would be entitled to compensation of Rs.50,000/- for pain and suffering. The award of compensation of Rs.13,900/ -

on other non-pecuniary heads i.e. Rs.5,000/- for transportation and nutritious food and Rs.8,900/- for actual medical expenses, is maintained. As discussed above, the award of Rs.1,28,900/- is enhanced to Rs.3,08,700/- (244800+50000+5000+8900).

4. The appellants are thus held entitled to receive total compensation of Rs.3,08,700/-. The appellants are also held entitled to receive interest at the rate of 7.5% per annum on the enhanced amount of compensation from the date of filing of the claim petition. Compliance of the judgment be made within a period of three months from the date its certified copy is produced before respondent insurance company. The impugned award is accordingly modified. The appeal stands allowed accordingly.