

IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC. APP. No. 24/2006

Judgment delivered on: January 29, 2008

Oriental Insurance Co. Ltd Appellant
Through: Mr. Tarkeshwar Nath and
Mr. P.K. Mishra, Advocates.

versus

Allauddin & Ors. Respondents
Through: Ms. Davinder Kaur Sabharwal, Adv.

**CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR,**

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. Oral:

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The appellant Oriental Insurance Co. Ltd, insurer of the offending vehicle has preferred an appeal challenging the

impugned order dated 7.10.2005 passed by the learned MACT,thereby awarding total compensation in the sum of Rs. 8,39,885/-. The impugned award has arisen out of the claim petition bearing Suit No. 53/2004 filed by respondent No. 1 against the appellant as well as against respondent Nos. 2 & 3 claiming compensation for the injuries sustained by him in the accident.

The brief facts, which are necessary for deciding the present appeal inter alia, are that on 23.8.2001 at about 4.30 A.M. the injured Shri Allauddin, who was employed as a cleaner/helper with M/s. Satpal Frieght Carrier was deputed on truck bearing registration no. HR-46-3702 and met with an accident. When the aforesaid truck reached near Village Dhundhkhera, suddenly the driver of the said truck who was driving in rash and negligent manner rammed into a DCM truck which was parked at one side and due to the said impact Shri Allauddin sustained crush injuries on his left leg resulting in its amputation.

Sh. Tarkeshwar Nath, counsel for the appellant insurance company contends that the Tribunal has awarded quite excessive and exorbitant amount of compensation, which is more in the nature of penalty to the appellant, more particularly, when the respondent claimant failed to prove his employment as a cleaner and in the absence of the same, resort to Minimum Wages Act by the Tribunal for determining the income of the deceased as that of an unskilled workman is illegal and unfounded. Counsel for the appellant further contends that the Tribunal has taken into consideration increase in the minimum wages so as to determine the loss of earning capacity of the respondent claimant. Placing reliance on the judgment of the Apex Court in **Bijoy Kumar Duggar Vs. Bidya Dhar Dutta & Ors.- (2006) 3 SCC 242**, counsel for the appellant submits that in the absence of any cogent and reliable evidence having been placed on record by the respondent, no benefit of future increase could have been given by the Tribunal to

the respondent claimant, counsel contends. Even the award amount of Rs.1,00,000/- towards pain and suffering and Rs. 2,00,000/- towards permanent disability/loss of amenities of life are on higher side and therefore, the award is bad and not tenable in the eyes of law argued, counsel for the appellant. Counsel for the appellant further assails the findings of the Tribunal in applying the multiplier of 18 years. In support of his argument counsel for the appellant has placed reliance on judgment of learned Single Judge of this Court in **National Insurance Co. Ltd. Vs. Pooja & Ors., 2006 IV AD (DELHI) 709.** Counsel for the appellant contends that the maximum multiplier should not exceed 16 unless there are exceptional reasons justifying the grant of higher multiplier than that of 16. Counsel thus urges that no such exceptional reasons exist in the present case for the award of higher multiplier of 18 years. Counsel for the appellant further contends that even no deduction has been made by the Tribunal towards the personal expenses of

the respondent, although benefit of future increase has been given without there being any evidence to this effect.

Counsel for the appellant also sought to urge that even the FIR in the present case was lodged at quite late stage which creates suspicion about the involvement of the offending vehicle in the accident in question. Counsel contends that even the driver, owner and insurer of the other offending vehicle were not impleaded in the claim petition by the respondent claimant before the Tribunal and therefore, the findings given by the Tribunal are bad and unjustified. The contention of the counsel for the appellant is that the driver, owner and insurer of the other vehicle involved in the accident also contributed to the accident and thus were also equally liable. Counsel for the appellant also challenged the authenticity and genuineness of the disability certificate issued from Govt. Hospital at Badau, although the respondent claimant remained under treatment in Hindu Rao Hospital.

Per contra Ms. Davinder Kaur Sabharwal, counsel for the respondent refutes the said submissions raised by the counsel for the appellant. Counsel for the respondent contends that the award passed by the Tribunal is quite just, fair and reasonable and no fault can be found with the same. Counsel also justifies the applicability of Minimum Wages Act and also the future increase granted in the award.

I have heard learned counsel for the parties and have perused the record.

Perusal of the award shows that the respondent claimant has suffered disability to the extent of 60% as his left leg was amputated above knee. The respondent claimant has claimed monthly income of Rs.4000-4500/- in the claim petition from his job of cleaner/helper of truck driver. The respondent was travelling in the said truck in his capacity as a cleaner of the truck. The claimant respondent has claimed income of Rs.4000-4500/- p.m. from his job of cleaner and since no cogent or reliable evidence to this effect

was placed by the respondent claimant, therefore, in the absence of the same, the Tribunal has taken recourse to the Minimum Wages Act for assessing the income of the respondent as that of unskilled labourer. It is no more res integra that in the absence of any sufficient or reliable evidence placed on record, the help of Minimum Wages Act can be taken to determine the income of the victim of the accident. I, therefore, do not find any infirmity in the impugned award assessing the income of the deceased under the Minimum Wages Act. Once income of the victim is determined under the Minimum Wages Act, then increase in the Minimum Wages Act can also be taken into consideration to give benefit of some future increase in income. The judgment of the Apex Court in **Bijoy Kumar Duggar's case (Supra)** as relied upon by the counsel for appellant may not be of any help to the appellant. A consistent view has been taken by this Court that future prospects are not akin to the future increase in the minimum wages and as such increase

in the minimum wages is granted by the Government so as to meet the inflationary trends, price index and other economic factors. The Tribunal has thus rightly taken into account the increase in the minimum wages so as to determine the loss of earning capacity of the respondent claimant. I, therefore, uphold the award of Rs.5,03,885/- towards loss of earning capacity in favour of the respondent.

As regards the other contention of the counsel for the appellant that the Tribunal has not deducted any amount towards personal expenses, at the first blush, the said contention of the counsel for the appellant appeared to be of some substance but the legal position in this regard is well settled that deductions towards personal expenses is made in fatal accident cases and not in disability/injury cases, therefore, the argument is without any force.

As regards the contention of the counsel for the appellant that the amount of Rs. 1,00,000/- awarded towards pain & sufferings and Rs. 2,00,000/- towards permanent

disability/loss of amenities of life are exorbitant, also falls face down. In the instant case, the respondent claimant has received crush injuries as a result of which he suffered disability to the extent of 60% due to amputation of his left leg above knee. Apart from amputation he also suffered fracture of both bones of the right forearm, which must have resulted in extreme pain, discomfort, inconvenience and hardship to the respondent claimant. Further, due to amputation of his left leg above knee, the respondent is unable to walk, run or squat and can neither ride a bicycle nor drive a two-wheeler. Thus, i do not find any infirmity in awarding Rs. 1,00,000/- towards pain & sufferings and Rs. 2,00,000/- towards permanent disability/loss of amenities of life and the same is not interfered with.

As regards the contention of the counsel for the appellant that even the driver, owner and insurer of the other offending vehicle were not impleaded in the claim petition by the respondent claimant before the Tribunal and even the

FIR in the present case was lodged at quite late stage creating suspicion about the involvement of the offending vehicle in the accident in question, it would suffice to mention that sufficient evidence exists on record to show that the driver of offending truck was sole contributor to the accident.

The other contention of the counsel for the appellant pertains to the veracity of the disability certificate issued by the Govt. Hospital, Badau, to the respondent from his hometown Badau instead of Hindu Rao Hospital, where he underwent the entire medical procedure till recovery, In this regard, i feel that the observation of the tribunal is correct that the procedure to obtain the disability certificate is cumbersome and the disability certificate issued by the Govt. Hospital, Badau, cannot be said to be a procured one. Also, under the Schedule to the Workmen Compensation Act, for amputation of leg above knee, 60% disability has been attributed. Thus, there is also no merit in this contention of

the counsel for the appellant.

As regards the contention of the counsel for the appellant that the tribunal has erred in applying the multiplier of 18 in the facts and circumstances of the case, I feel that the tribunal has committed no error. This case pertains to the year 2001 and at that time II schedule to the Motor Vehicles Act had already been brought on the statute books. The said schedule came on the statute book in the year 1994 and prior to 1994 the law of the land was as laid down by the Hon'ble Apex Court in **1994 SCC (Cri) 335, G.M., Kerala SRTC v. Susamma Thomas** held the field. In the said judgment, it was observed by the Court that maximum multiplier of 16 could be applied by the Courts, which after coming in to force of the II schedule has risen to 18. In the facts of the present case I am of the view that the multiplier of 18 should have been applied. Therefore, the tribunal committed no error on this account as well. Thus, no interference is made in the award on this account as well.

In view of the above discussion, there is no merit in the present appeal and the same is hereby dismissed.

January 29, 2008
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KAILASH GAMBHIR,J