

IN THE HIGH COURT OF DELHI AT NEW DELHI**+ MAC.APP.No.175/2006**

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Date of decision: 25th August, 2009

THE NEW INDIA ASSURANCE CO. LTD. Appellant
Through : Mr. Pankaj Seth, Adv.

versus

RAJA RAM & ANR. Respondents
Through : Mr. Nishan Shah, Adv.

CORAM :-**THE HON'BLE MR. JUSTICE J.R. MIDHA**

1. Whether Reporters of Local papers may be allowed to see the Judgment? **YES**
2. To be referred to the Reporter or not? **YES**
3. Whether the judgment should be reported in the Digest? **YES**

JUDGMENT (Oral)

1. The appellant has challenged the award of the learned Tribunal whereby compensation of Rs.4,00,000/- has been awarded to claimant/respondent No.1.

2. The accident dated 9th March, 2001 resulted in 25% disability to claimant/respondent No.1. The claimant suffered two fractures i.e. the fracture of upper end of tibia on both left and right side. The claimant was a rickshaw puller. The claimant is unemployed after the accident as he is not in a position to pull the rickshaw anymore. The learned Tribunal took the loss of earning capacity to be 100% considering that the claimant is not in a position to pull the rickshaw anymore. The loss of income of

Rs.3,64,056/- has been awarded to the claimant taking the

minimum wages into consideration and applying the multiplier of 11. Rs.35,000/- has been awarded towards non-pecuniary compensation. No compensation has been awarded towards medical expenditure, conveyance and special diet.

3. The appellant has challenged the impugned award on the short ground that the earning capacity of the claimant should not be taken to be 100% as the claimant can engage himself in some other occupation and has some earning capacity. The learned counsel for the appellant further submits that the claimant should make some efforts to rehabilitate himself.

4. The claimant is present in the Court and his injuries have been perused by this Court. In view of 25% disability suffered by the claimant, he is not in a position to pull the rickshaw anymore but he can certainly engage himself in some other occupation. As such, the loss of earning capacity of the claimant is liable to be reduced. However, reduction in loss of earning capacity will not affect the ultimate award passed by the learned Tribunal because the learned Tribunal has not taken into consideration the effect of increase in minimum wages due to inflation and increase in price index. It is well settled by the catena of judgments in the cases of **Kanwar Devi vs. Bansal Roadways, 2008 ACJ 2182, Lekh Raj vs Suram Singh, 2007 ACJ 2165, National Insurance Company Limited vs. Renu Devi III (2008) ACC 134** and **UPSRTC vs. Munni Devi**, MAC.APP.No.310/2007 decided on 28.07.2008 where it has been held that the Court should take judicial notice of increase in minimum wages due to

inflation and increase in price index. The Court has taken the view that the minimum wages get doubled over the period of 10 years and increase in minimum wages is not akin to future prospects. It is also well settled that the claimant is entitled to compensation towards medical expenditure, conveyance and special diet which has not been awarded to him. It is also well settled that compensation has to be awarded separately for pain and suffering and for loss of amenities of life and considering 25% disability, the claimant is entitled to compensation of Rs.35,000/- towards pain and suffering and Rs.35,000/- towards loss of amenities of life. Thus, taking into consideration the increase in minimum wages due to inflation and rise in price index, the compensation for medical expenditure, conveyance and special diet and compensation for loss of amenities of life, the compensation of Rs.4,00,000/- awarded by the learned Tribunal is fair and reasonable and needs no interference.

5. The learned counsel for the appellant submits that the claimant has not filed any cross-objections and, therefore these questions cannot be examined by this Court. Section 167 of the Indian Evidence Act provides that the judgment of the Trial Court is not liable to be set aside merely because the Trial Court has taken some irrelevant evidence into consideration or has excluded some relevant evidence, if after taking into consideration what has been wrongly excluded or by excluding what has been wrongly included, the result is the same. This case has been squarely covered by Section 167 of the Indian

Evidence Act. The learned Tribunal wrongly took the loss of earning capacity of the claimant to be 100% but at the same time failed to award the compensation towards medical expenditure, conveyance, special diet, loss of amenities of life as well as increase in minimum wages due to inflation and rise in price index. Taking all these facts into consideration the award passed by the learned Tribunal is just, fair and reasonable.

6. For all the aforesaid reasons, the appeal is dismissed.

7. The appellant has deposited the entire award amount in terms of the order dated 10th March, 2006 out of which 50% award amount has been released to the claimant and the remaining amount is lying with the Registrar General of this Court.

8. The Registry is directed to release a sum of Rs.40,000/- to the claimant/respondent. The cheque with respect to the remaining amount be issued to UCO Bank, Delhi High Court Branch with instructions to put the same in fixed deposit in the name of the claimant for a period of five years on which monthly interest be paid to him.

9. The interest on the aforesaid fixed deposit shall be paid monthly by automatic credit of interest in the Savings Account of claimant/respondent.

10. Withdrawal from the aforesaid account shall be permitted to claimant/respondent after due verification and the Bank shall issue photo Identity Card to claimant/respondent to facilitate identity.

11. No cheque book be issued to claimant/respondent without the permission of this Court.

12. The original Fixed Deposit Receipt shall be retained by the Bank in the safe custody. However, the original Pass Book shall be given to claimant/respondent along with the photocopy of the FDR.

13. The original Fixed Deposit Receipt shall be handed over to the claimant/respondent at the end of the fixed deposit period.

14. No loan, advance or withdrawal shall be allowed on the said Fixed Deposit Receipt without the permission of this Court.

15. Half yearly statement of account be filed by the Bank in this Court.

16. On the request of the claimant/respondent, the Bank shall transfer the Savings Account to any other branch of UCO Bank in Delhi according to the convenience of the claimant/respondent.

17. The claimant/respondent shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi.

10. Copy of the order be given dasti to counsel for both the parties under the signatures of the Court Master.

19. Copy of this order be also sent to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) through the UCO Bank, High Court Branch under the signature of Court Master.

J.R. MIDHA, J

AUGUST 25, 2009/aj