

+ **MAC.APP.No.23/2010**Date of Decision: 25th February, 2010

%

NEW INDIA ASSURANCE CO LTD Appellant
Through Mr. L.K. Tyagi, Advocate.

versus

ISHWARI PRASAD & ORS Respondents
Through Mr. G.P. Singh, Mr. N.K.
Tripathi and Mr. V.K. Singh, Advocates.

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)

CM No.1165/2010 (Delay)

1. For the reasons stated in the application, the delay in filing the appeal is condoned.
2. The application stands disposed of.

MAC.APP.No.23/2010 and CM No.1163/2010

1. Notice issued to respondent No.1 has been returned unserved. However, Mr. G.P. Singh, Advocate accepts notice on behalf of respondent No.1.

2. The appellant has challenged the award of the learned Tribunal whereby compensation of Rs.8,65,000/- has been awarded to claimant/respondent No.1.

3. The accident dated 27th May, 2006 resulted in the amputation of right leg above knee of claimant/respondent No.1. The permanent disability of claimant/respondent No.1 has been assessed as 80% as per certificate Ex.P-6. The learned Tribunal awarded Rs.4,000/- towards medical treatment, Rs.50,000/- towards pain and suffering, Rs.7,55,712/- towards loss of earning capacity, Rs.50,000/- towards arrangement of artificial limb, Rs.2,000/- towards special diet and Rs.3,000/- towards conveyance. The total compensation awarded is Rs.8,64,712/- rounded off as Rs.8,65,000/-.

4. The only ground urged by learned counsel for the appellant at the time of hearing of this appeal is that the increase in minimum wages due to inflation and rise in price index should not be taken into consideration because the claimant was earning less than minimum wages at the time of the accident. The learned counsel for claimant/respondent No.1 in reply submits that the compensation towards pain and suffering is grossly insufficient and no compensation has been awarded towards loss of amenities in life and loss of disfiguration.

5. The law with respect to the non-pecuniary compensation is well settled by the judgment of this Court in

the case of **Oriental Insurance Co. Ltd. vs. Vijay Kumar Mittal (2008) ACJ 1300**, where this Court examined all the previous judgments with respect to the non-pecuniary compensation awarded in the case of permanent disability and held that the Courts have been awarding about Rs.3,00,000/- under the heads of non-pecuniary damages for amputation of leg with permanent disability of 50% and above. In this case, the claimant has suffered 80% permanent disability and is, therefore, entitled to non-pecuniary compensation of Rs.3,00,000/- whereas the learned Tribunal has awarded only Rs.50,000/-. The compensation of Rs.50,000/- is grossly insufficient considering that the claimant/respondent No.1 is 80% disabled.

6. In view of the facts and circumstances of this case, no case for interference of the award is made out and the appeal is therefore dismissed.

7. The appellant has deposited a sum of Rs.10,81,250/- in terms of order dated 21st January, 2010.

8. UCO Bank is directed to release a sum of Rs.81,250/- to claimant/respondent No.1 by transferring the said amount to his Savings Bank Account. The remaining be kept in fixed deposits in the following manner:

- (i.) Fixed deposit for Rs.50,000/- in the name of respondent No.1 for a period of six months.

- (ii.) Fixed deposit for Rs.50,000/- in the name of respondent No.1 for a period of one year.
- (iii.) Fixed deposit for Rs.50,000/- in the name of respondent No.1 for a period of one and a half years.
- (iv.) Fixed deposit for Rs.50,000/- in the name of respondent No.1 for a period of two years.
- (v.) Fixed deposit for Rs.50,000/- in the name of respondent No.1 for a period of two and a half years.
- (vi.) Fixed deposit for Rs.50,000/- in the name of respondent No.1 for a period of three years.
- (vii.) Fixed deposit for Rs.50,000/- in the name of respondent No.1 for a period of three and a half years.
- (viii.) Fixed deposit for Rs.50,000/- in the name of respondent No.1 for a period of four years.
- (ix.) Fixed deposit for Rs.50,000/- in the name of respondent No.1 for a period of four and a half years.
- (x.) Fixed deposit for Rs.50,000/- in the name of respondent No.1 for a period of five years.
- (xi.) Fixed deposit for Rs.50,000/- in the name of respondent No.1 for a period of five and a half years.

- (xii.) Fixed deposit for Rs.50,000/- in the name of respondent No.1 for a period of six years.
- (xiii.) Fixed deposit for Rs.50,000/- in the name of respondent No.1 for a period of six and a half years.
- (xiv.) Fixed deposit for Rs.50,000/- in the name of respondent No.1 for a period of seven years.
- (xv.) Fixed deposit for Rs.50,000/- in the name of respondent No.1 for a period of seven and a half years.
- (xvi.) Fixed deposit for Rs.50,000/- in the name of respondent No.1 for a period of eight years.
- (xvii.) Fixed deposit for Rs.50,000/- in the name of respondent No.1 for a period of eight and a half years.
- (xviii.) Fixed deposit for Rs.50,000/- in the name of respondent No.1 for a period of nine years.
- (xix.) Fixed deposit for Rs.50,000/- in the name of respondent No.1 for a period of nine and a half years.
- (xx.) Fixed deposit for Rs.50,000/- in the name of respondent No.1 for a period of ten years.

9. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of respondent No.1.

10. Withdrawal from the aforesaid account shall be permitted to respondent No.1 after due verification and the Bank shall issue photo Identity Card to respondent No.1 to facilitate identity.

11. No cheque book be issued to respondent No.1 without the permission of this Court.

12. The Bank shall issue Fixed Deposit Pass Book instead of the FDR to the appellants and the maturity amount of the FDRs be automatically credited to the Saving Bank Account of the beneficiary at the end of the FDRs.

13. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.

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

15. On the request of respondent No.1, the Bank shall transfer the Savings Account to any other branch of UCO Bank according to the convenience of respondent No.1.

16. Respondent No.1 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.

17. The statutory amount of Rs.25,000/- be refunded back to the appellant through counsel within a period of four weeks.

18. CM No.1163/2010 stands disposed of.
19. Copy of the order be given dasti to counsel for both the parties under the signatures of the Court Master.
20. 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

FEBRUARY 25, 2010

HL