

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: 12th May, 2010

Date of Order: 4th June, 2010

+ **MAC APP 82/2009**

% **04.06.2010**

NEW INDIA ASSURANCE CO. LTD. ...Appellant

Through: Mr. Dinesh Kumar,
Advocate.

Versus

AKSHAY SHARMA & ORS. ...Respondents

Through: None.

CORAM :

HON'BLE MR. JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

1. By present appeal the insurance company has assailed the quantum of compensation awarded by the Tribunal vide award dated 22nd September, 2008 to the injured on the ground that the Tribunal wrongly considered the disability of the injured as 22% since this disability was only in respect to the left lower limb of the injured. The other ground put forth is that the Tribunal wrongly took into account the minimum wages as a factor for calculating the compensation despite the

fact, that the injured was a ten year old child and was studying in class fourth.

2. Brief facts relevant for deciding this appeal are that on 27th May, 2004 at about 2 p.m. Mr. Akshay Sharma, a boy studying in class fourth, was hit by vehicle bearing registration no. DL 1LA 2784 being driven in negligent manner. The boy suffered multiple fractures initially and was treated at Satyam Hospital, Rohini, Delhi from 27th May, 2004 to 11th June, 2004. In view of the seriousness of the accident, skin drafting had also to be done. After his discharge from the hospital on 11th June, 2004, he continued to remain as an outdoor patient. The Tribunal directed for assessing the disability of the child in view of the nature of injuries sustained by the child and the hospital assessed the disability at 22%.

3. While assessing the damages, the Tribunal considered that the child was around eleven years of age at the time of the accident and after about eight years he would be capable of being employed, at least as a skilled worker and the minimum wages at the time of his employment should be about Rs.6,622/- and applying the multiplier of 17 and disability of 22%, the future loss of income of the injured was calculated as Rs. 2,97,195/-. The other damages awarded by the Tribunal were Rs.32,000/- on the basis of actual medical expenses, (Bills of Rs.32,007.31 were proved), attendant

charges of Rs.19,700/-, Rs.50,000/- for pain and sufferings, Rs.20,000/- towards special diet and conveyance and Rs.25,000/- towards loss of amenities of life. Thus, the total compensation of Rs.4,44,000/- was awarded.

4. The grievance of the insurance company is in respect of compensation awarded against future loss of income. The plea taken is that 22% disability was only in respect of one lower limb not in respect of the whole body and the Court should not have calculated future loss of income at 22 per cent of income. It is pleaded that since the injured was a student, his life was full of uncertainties, who could say as to what would be the future of the student.

5. The Tribunal in this case has kept in mind the future uncertainties of the life. There is no presumption that son of a poor man shall, even after studies, shall turn out to be only a skilled workman and has no probability of rising to the level of top executive or an IAS officer or a successful business man or a politician. The Tribunal has not considered these probable eventualities, with which the future of every child is pregnant. The Tribunal has taken most conservative estimate of loss of future income of the injured on the basis of his becoming a skilled workman. Since the child in this case was a student and had also lost one year due to this accident, the Tribunal did not award any compensation for loss of studies and loss of

his one academic year. The Tribunal had not taken into account loss of his marriage prospects, etc.

6. I consider that the amount of compensation awarded by the Tribunal in no manner could be considered excessive or a windfall. I find no force in this appeal. Accordingly, this appeal is dismissed.

June 04, 2010

AK

SHIV NARAYAN DHINGRA J.