

KAMESH KUMAR GUNUPUR Appellant
Through Mr. Vijay Kumar, Advocate.

versus

NATIONAL INSURANCE CO.LTD. & ORS Respondents
Through Mr. S.L. Gupta, Advocate.

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

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|----|---|------------|
| 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.5920/2008 (Delay)

- For the reasons stated in the application, the delay of 8 days in filing the appeal is condoned.
- CM stands disposed of.

MAC.APP.No.258/2008

- The learned counsel for the appellant submits that there is no dispute on valid insurance. In that view of the matter, notice to respondent Nos. 2 and 3 is dispensed with.
- The appellant has challenged the award of the learned Tribunal whereby compensation of Rs.1,71,846/- has been

awarded to the appellant. The appellant seeks enhancement of the award amount.

2. The accident dated 13th July, 2001 resulted in grievous injuries to the appellant. The appellant was travelling in TSR bearing No.DL-1RC-3639 on Shaheed Jeet Singh Marg, near Qutub Institutional Area, when car bearing No. DL 3CS 1983 hit the TSR due to which the TSR over turned and the appellant suffered grievous injuries. The appellant suffered three fractures on his thigh, knee and ankle, namely, subtrochanteril fracture leg femur, lateral condyle fracture left tibia and fracture tibial plafond with dislocation left ankle. The appellant underwent six surgeries and a plate was inserted for joining the fractures. The medical record of the appellant's treatment was proved as Ex.PW-1/C1 to Ex.PW-1/C26. The appellant incurred Rs.33,946/- on his treatment which was proved by bills Ex.PW-1/C-1.

3. The appellant was working as Senior Executive - Strategic Planning Whirlpool and at the time of the accident drawing a salary of Rs.19,300/- proved by salary certificate Ex.PW-1/D-1. The appellant remained on leave for four months and twenty one days from 14th July, 2001 to 4th December, 2001, proved by employer's certificate Ex.PW-1/D-1.

4. The appellant suffered 16% permanent disability in respect of left lower limb resulting to healed fracture left femur with fracture lateral tibial condyle left with dislocation

left ankle proved by disability certificate Ex.PA. The appellant cannot bend his legs due to the injuries and limps while walking.

5. The learned Tribunal has awarded Rs.33,946 towards the medical expenses, Rs. 57,900/- towards loss of income for three months, Rs.15,000/- towards conveyance, Rs.15,000/- towards special diet and Rs.50,000/- towards pain and sufferings. The total compensation is awarded Rs.1,71,846/-.

6. The learned counsel for the appellant has urged following grounds at the time of hearing of this appeal:-

- (i) The compensation be awarded for loss of earning capacity due to permanent disability.
- (ii) The compensation for loss of income be awarded for four months and twenty one days.
- (iii) The compensation for conveyance be enhanced.
- (iv) The compensation be awarded for loss of amenities of life, loss of disfiguration and loss of reduction of matrimonial prospects.

7. The appellant has suffered permanent disability to the extent of 16%. The appellant is present in Court and his injuries have been perused. The loss of earning capacity of the appellant is taken to be 10%. The appellant was earning Rs.19,300/- at the time of accident and Rs.1,300/- is deducted towards Income Tax. The appellant had a permanent employment and, therefore, 50% is added

towards future prospects. The income of the appellant is taken as Rs.27,000/-(Rs.18,000 + 50% of Rs.18,000). The appellant was aged 25 years at the time of the accident and by applying the multiplier of 18 and taking 10% of the same, the loss of earning capacity of the appellant is computed to be Rs.5,83,200/- [10% of (Rs.27,000 x 12 x 18)].

8. The appellant remained on leave for four months and twenty one days, as per the leave certificate. However, the learned Tribunal has awarded loss of income for three months only. The loss of income due to leave is awarded to the appellant for four months and twenty one days, which is computed as Rs.1,26,900/- [(Rs.27,000 x 4) + (Rs.27,000 x 21/30)]

9. The learned Tribunal has awarded Rs.15,000/- towards conveyance. The appellant remained under treatment for six months and underwent six surgeries. The permanent disability in respect of left lower limb has resulted in limping. The conveyance is therefore enhanced from Rs.15,000/- to Rs.20,000/-.

10. The learned Tribunal has awarded Rs.50,000/- towards loss of pain and suffering, which is reasonable. However, no compensation is awarded for loss of amenities of life, disfiguration and reduction of matrimonial prospects. Rs.30,000/- is awarded towards loss of amenities of life and Rs.20,000/- towards disfiguration and Rs.15,000/- towards reduction of matrimonial prospects.

11. The appellant is entitled to total compensation of Rs.8,94,046/- as per the break-up given hereunder:-

(i)	Compensation for medical expenses.	:	Rs.33,946/-
(ii)	Compensation towards special diet.	:	Rs.15,000/-
(iii)	Compensation towards conveyance.	:	Rs.20,000/-
(iv)	Compensation towards loss of income due to leave.	:	Rs.1,26,900/-
(v)	Compensation towards loss of earning capacity due to permanent disability.	:	Rs.5,83,200/-
(vi)	Compensation towards pain and suffering.	:	Rs.50,000/-
(vii)	Compensation towards loss of amenities of life	:	Rs.30,000/-
(viii)	Compensation towards disfiguration.	:	Rs.20,000/-
(ix)	Compensation towards reduction of matrimonial prospects.	:	Rs.15,000/-
Total		:	Rs.8,94,046/-

12. The appeal is allowed and the award amount is enhanced from Rs.1,71,846/- to Rs.8,94,046/-. The learned Tribunal has awarded interest @ 9%per annum which is not disturbed on the original award amount of Rs.1,71,846/-. However, on the enhanced award amount, the rate of interest shall be @7.5% per annum from the date of filing of the petition till realization.

13. The enhanced award amount along with interest be deposited by respondent No.1 with UCO Bank, Delhi High Court Branch A/c Kamesh Kumar Gunupar by means of a cheque through Mr.M.M. Tandon, Member-Retail Team, UCO

Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) within 45 days.

14. Upon the enhanced award amount being deposited, UCO Bank is directed to release 10% of the amount to the appellant by transferring the same to his Savings Bank Account. The remaining amount be kept in the fixed deposits in the name of appellant in the following manner:

- (i) Fixed deposit in respect of 10% of the award amount for a period of six months.
- (ii) Fixed deposit in respect of 10% of the award amount for a period of one year.
- (iii) Fixed deposit in respect of 10% of the award amount for a period of one and a half years.
- (iv) Fixed deposit in respect of 10% of the award amount for a period of two years.
- (v) Fixed deposit in respect of 10% of the award amount for a period of two and a half years.
- (vi) Fixed deposit in respect of 10% of the award amount for a period of three years.
- (vii) Fixed deposit in respect of 10% of the award amount for a period of three and a half years.
- (viii) Fixed deposit in respect of 10% of the award amount for a period of four years.
- (ix) Fixed deposit in respect of 10% of the award amount for a period of four and a half years.

15. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of the appellant.

16. Withdrawal from the aforesaid account shall be permitted to the appellant after due verification and the Bank shall issue photo Identity Card to the appellant to facilitate identity.

17. No cheque book be issued to the appellant without the permission of this Court.

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

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

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

21. On the request of the appellant, the Bank shall transfer the Savings Account to any other branch of UCO Bank according to the convenience of the appellant.

22. The appellant 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 (Mobile No. 09310356400).

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

24. 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.

MARCH 10, 2010
HL

J.R. MIDHA, J