

HARBANS LAL DHADRA Appellant
Through : Mr. S.P. Sharma, Adv.

versus

NEW INDIA ASSURANCE CO. LTD. & ORS .. Respondents
Through : Mr. R.K. Kohli, Adv.

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)

1. The appellant has challenged the award of the learned Tribunal whereby compensation of Rs.34,360/- has been awarded to him. The appellant seeks enhancement of the award amount.

2. The accident dated 7th November, 1990 resulted in grievous injuries to the appellant. The appellant suffered union compound fracture of both bones of left leg. The appellant had to undergo bone grafting at Moolchand Hospital. The permanent disability of the appellant has been assessed as 10% in respect of left upper and lower limb vide disability certificate dated 7th March, 2008. The learned

Tribunal has awarded Rs.4,000/- towards expenditure on treatment, Rs.20,000/- towards pain and suffering, Rs.2,000/- towards special diet, Rs.2,000/- towards conveyance and Rs.6,360/- towards loss of income. The total compensation awarded is Rs.34,360/-.

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

- (i) The compensation for loss of income be enhanced.
- (ii) The compensation for loss of earning capacity be awarded.
- (iii) The compensation for pain and suffering be enhanced.
- (iv) The compensation be awarded for loss of amenities of life and disfiguration.
- (v) The compensation for conveyance be enhanced.

4. The appellant has suffered 10% disability in respect of left lower and upper limb due to united fracture both bones left leg with acromio clavicular dislocation left shoulder as per the disability certificate. The appellant is a self-employed professional photographer.

5. The appellant is present in the Court and his injuries have been perused. The appellant's left leg has shortened and he limps while walking. The learned Tribunal has not awarded any compensation for loss of earning capacity to the appellant. The loss of earning capacity of the appellant

is taken to be 10%. The minimum wages at the time of the accident of the appellant were Rs.1,060/- per month. The income of the appellant for computation of compensation is taken to be the average of minimum wages and its double which comes to Rs.1,590/- $[(Rs.1,060 + Rs.2,120)/2]$ in terms of the judgment of this Court in the cases of **Kanwar Devi vs. Bansal Roadways, 2008 ACJ 2182, 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. The appellant was aged 28 years at the time of the accident and applying the multiplier of 17 and taking 10% of the same, the loss of earning capacity is computed to be Rs.32,436/- $(Rs.1,590 \times 12 \times 17 \times 10\%)$. The learned Tribunal has awarded Rs.6,360/- towards loss of income for six months taking the minimum wages of Rs.1,060/-. However, the increase in minimum wages due to inflation and rise in price index has not been taken into consideration in terms of the aforesaid judgments. Taking the increase in minimum wages due to inflation and rise in price index, the compensation for loss of income is computed to be Rs.9,540/- $[(Rs.1,060 + Rs.2,120)/2 \times 6]$.

6. The learned Tribunal has awarded Rs.20,000/- towards pain and suffering. No compensation has been awarded for loss of amenities of life and disfiguration to which the appellant is entitled to. Considering the injuries suffered by

the appellant and the surgery for bone grafting undergone by him and the permanent disability suffered, the compensation for pain and suffering is enhanced from Rs.20,000/- to Rs.25,000/-. Rs.20,000/- is awarded towards loss of amenities of life and further Rs.20,000/- is awarded towards disfiguration.

7. The learned Tribunal has awarded Rs.2,000/- towards conveyance. In view of the permanent disability suffered by the appellant due to which he limps while walking and he is unable to drive the vehicle, the compensation of Rs.2,000/- is grossly inadequate. The compensation for conveyance is enhanced from Rs.2,000/- to Rs.20,000/-.

8. The appellant is entitled to total compensation of Rs.1,32,976/- (Rs.32,436/- towards loss of earning capacity, Rs.9,540/- towards loss of income during treatment, Rs.25,000/- towards pain and suffering, Rs.20,000/- towards loss of amenities of life, Rs.20,000/- towards disfiguration, Rs.2,000/- towards special diet, Rs.20,000/- towards conveyance and Rs.4,000/- towards expenditure on treatment)

9. The appeal is allowed and the award amount is enhanced from Rs.34,360/- to Rs.1,32,976/- along with interest @7.5% per annum from the date of filing of the claim petition till the notice of deposit under Order XXI Rule 1 of the Code of Civil Procedure.

10. The enhanced award amount along with interest be deposited by respondent No.1 with State Bank of India A/c Harbans Lal Dhadra, Tis Hazari Court Branch through Mr. H.S. Rawat, Relationship Manager, Tis Hazari Branch, Tis Hazari (Mb:09717044322).

11. Upon the aforesaid deposit being made, the State Bank of India is directed to release 10% of the same to the appellant by transferring the same to his Saving Bank Account.

12. The remaining amount be kept in fixed deposit in the name of the 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.

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

14. 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.

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

16. 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.

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

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

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

20. The appellant shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. H.S. Rawat, Relationship Manager, Tis Hazari Branch, Tis Hazari (Mb:09717044322).

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

22. Copy of this order be also sent to State Bank of India, Tis Hazari Branch through Mr. H.S. Rawat, Relationship Manager, Tis Hazari Branch, Tis Hazari (Mb:09717044322) under the signature of Court Master.

J.R. MIDHA, J

MARCH 08, 2010

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