

NEW INDIA ASSURANCE CO. LTD Appellant
Through Mr. Kanwal Choudhary, Adv.

versus

SURENDER KUMAR AND ORS Respondents
Through Mr. O.P. Mannie, Adv. for R-1

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.4,56,000/- has been awarded to respondent No.1.

2. The accident dated 17th November, 2007 resulted in grievous injuries to the respondent No.1. The respondent No.1 was suffered fractures of both bones of left leg for which interlocking and nailing was done. The permanent disability of the appellant has been assessed to be 10% in respect of left lower limb. The appellant was 36 years old at the time of the accident and running his business in the name of M/s Shiva Transport. The appellant was earning Rs.1,38,690/- per annum, which was proved by the Income

Tax Return-Ex.PW1/5. The appellant has to undergo another surgery for removal of the nails. The appellant is unable to drive any vehicle after the accident and has also suffered the loss of income on that account.

3. The learned Tribunal has awarded Rs.5,200/- towards medical expenses, Rs.15,000/- towards future medical expenses, Rs.40,000/- towards loss of income, Rs.2,36,000/- towards loss of earning capacity, Rs.60,000/- towards pain and sufferings, Rs.75,000/- towards loss of amenities, Rs.14,100/- towards attendant charges, Rs.5,000/- towards conveyance charges and Rs.5,000/- towards special diet. The total compensation awarded is Rs.4,55,300/- rounded off as Rs.4,56,000/-.

4. The learned counsel for the appellant submits that the compensation awarded for loss of income and loss of earning capacity is on a higher side. The learned counsel further submits that compensation for pain and suffering and loss of amenities is on a higher side considering the fact that the appellant has suffered only 10% permanent disability. The learned counsel further submits that the multiplier be reduced from 17 to 16 considering the age of the appellant to be 36 years at the time of accident.

5. Claimant/respondent No.1 is present in Court and his injuries have been perused. Respondent No.1 was running a transport business and was himself driving a transport vehicle prior to the accident. After the accident, respondent

No.1 is not able to drive any vehicle and has suffered loss of Income. The compensation for loss of income and loss of earning capacity has been awarded taking the income of respondent No.1 as per the Income Tax Return-Ex.PW1/5 for the year 2007-08. However, the multiplier at the age of 36 is 16 whereas the learned Tribunal has applied the multiplier of 17. The multiplier is, therefore, reduced from 17 to 16. The loss of earning capacity is computed to be Rs.2,21,904/- (Rs.1,38,690 x 16 x 10%). The loss of earning capacity is accordingly reduced from Rs.2,36,000/- to Rs.2,21,904/-.

6. The compensation for pain and suffering and loss of amenities of life is just, fair and reasonable considering the injuries suffered by respondent No.1.

7. The appeal is partially allowed and the award amount is reduced from 4,56,000/- to Rs.4,41,204/- (Rs.2,21,904/- + Rs.5,200 + Rs.15,000 + Rs.40,000/- + Rs.60,000/- + Rs.75,000/- + Rs.14,100 + Rs.5,000 + Rs.5,000) along with interest @ 7.5% per annum from the date of filing of the claim petition till today.

8. The appellant has deposited the entire award amount along with up to date interest amounting to Rs.4,83,668/- with UCO Bank, Delhi High Court Branch in terms of order dated 24th September, 2009. The award amount in terms of this judgment along with up to date interest comes to Rs.4,72,391/- (Rs.4,41,204 – Rs.25,000 + Rs.56,187).

9. The UCO Bank is directed to refund a sum of Rs.14,096/- (Rs.4,55,300 – Rs.4,41,204) to the appellant by means of cheque which may be delivered to the appellant's counsel Mr. Kanwal Chaudhary.

10. In respect of remaining amount, the UCO bank is directed to keep a sum of Rs.4,00,000/- in fixed deposit in the name of respondent No.1 in the following manner:-

- (i) Fixed deposit for Rs.25,000/- for a period of six months.
- (ii) Fixed deposit for Rs.25,000/- for a period of one year.
- (iii) Fixed deposit for Rs.25,000/- for a period of one and a half years.
- (iv) Fixed deposit for Rs.25,000/- for a period of two years.
- (v) Fixed deposit for Rs.25,000/- for a period of two and a half years.
- (vi) Fixed deposit for Rs.25,000/- for a period of three years.
- (vii) Fixed deposit for Rs.25,000/- for a period of three and a half years.
- (viii) Fixed deposit for Rs.25,000/- for a period of four years.
- (ix) Fixed deposit for Rs.25,000/- for a period of four and a half years.

- (x) Fixed deposit for Rs.25,000/- for a period of five years.
- (xi) Fixed deposit for Rs.25,000/- for a period of five and a half years.
- (xii) Fixed deposit for Rs.25,000/- for a period of six years.
- (xiii) Fixed deposit for Rs.25,000/- for a period of six and a half years.
- (xiv) Fixed deposit for Rs.25,000/- for a period of seven years.
- (xv) Fixed deposit for Rs.25,000/- for a period of seven and a half years.
- (xvi) Fixed deposit for Rs.25,000/- for a period of eight years.

11. The remaining amount be released to respondent No.1 by transferring the same to his Savings Bank Account.

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

13. 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.

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

15. The Bank shall issue Fixed Deposit Pass Book instead of the FDRs to respondent No.1 and the maturity amount of the FDRs be automatically credited to the Saving Bank Account of the beneficiary at the end of the FDR.

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

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

18. 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.

19. 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.

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

21. 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.

22. The statutory amount of Rs.25,000/- be refunded by the registrar to the appellant through counsel within four weeks.
23. Copy of this order be given 'Dasti' to learned counsel for the parties under signatures of Court Master.

J.R. MIDHA, J

FEBRUARY 18, 2010
HL