

+ **MAC.APP.No.576/2009**Date of Decision: 11th January, 2010

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NATIONAL INSURANCE COMPANY LTD Appellant
Through : Ms. Manjusha Wadhwa and
Ms. Harsh Lata, Advs.

versus

GURUDEV @ LAL RAM Respondent
Through : Mr. O.P. Mannie, Adv.
along with respondent No.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.7,58,996/- has been awarded to respondent No.1. The appellant seeks reduction of the award amount.

2. The accident dated 7th September, 2006 resulted in the grievous injuries to respondent No.1. The respondent was going on his motorcycle bearing No.DL-4S-AY-6852 when he was hit by Maruti Car bearing No.HR-13-B-0886. Respondent No.1 remained hospitalized intermittently till 16th November, 2007. The injuries suffered by respondent No.1 are as

under:-

- (i) Fracture tibia & fibula with loss of skin with multiple fracture of right and left leg.
- (ii) Fracture femoral condyle, fracture medial malleolus.
- (iii) Fracture Calcaneum right leg.
- (iv) Loss of skin.
- (v) Deep wound on right buttock close to natal cleft right lower limb.
- (vi) Tibial pins and two pins in the 1st & 5th MT bones fixed.

3. The disability of respondent No.1 was assessed to be 45% in respect of left lower limb as per disability certificate, Ex.PW1/1. Respondent No.1 had passed Senior Secondary Certificate Examination and was also holding a diploma in Information and Technology. Respondent No.1 claimed that he was working as Document/Installment collector with M/s H.R.D. Services earning Rs.5,000/- per month. However, in the absence of any documentary proof of income, the learned Tribunal took the minimum wages of Rs.5,640/- after considering increase in minimum wages due to inflation and rise in price index. The learned Tribunal assessed the loss of earning capacity of respondent No.1 to be 30% and the loss of earning capacity was computed at Rs.3,65,472/- [30% of (Rs.5,640 x 12 x 18)]. The learned Tribunal further awarded Rs.15,000/- towards special diet, Rs.15,000/- towards

attendant charges, Rs.18,800/- towards loss of income, Rs.50,000/- towards pain and suffering, Rs.70,000/- towards loss of amenities of life and Rs.40,000/- towards disfigurement. The total compensation awarded is Rs.7,58,996/-.

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

(i) The loss of earning capacity of respondent No.1 be reduced from 30% to 10% or 15%.

(ii) The compensation for loss on account of conveyance be reduced.

5. The learned Tribunal has taken the loss of earning capacity of respondent No.1 as 30% considering the fact that respondent No.1 was unable to walk fast, run as well as drive two wheeler and the nature of occupation of respondent No.1 was such that he needed to stand, walk and drive. Respondent No.1 has also been incapacitated to climb stairs. The permanent disability of respondent No.1 in relation to left lower limb has been assessed to be 45%. Although there are no set norms for assessing permanent disability in respect of whole body, PW-2 deposed that permanent disability in relation to whole body would be 10% to 15%.

6. The loss of earning capacity has to be assessed by taking the occupation of the injured and the effect of the injuries on the occupation. The percentage of permanent disability and the loss of earning capacity are two different

concepts and the loss of earning capacity has to be assessed by taking the occupation and effect of the injuries on the occupation into consideration. Respondent No.1 is present in Court and his injuries have been perused by this Court. The learned Tribunal has taken the loss of earning capacity to be 30% which is just, fair and reasonable in the facts and circumstances of this case.

7. The amount awarded by the learned Tribunal towards conveyance is also just, fair and reasonable considering the nature of injuries suffered by respondent No.1 and the period of his treatment.

8. For all the aforesaid reasons, the appeal is dismissed.

9. The appellant has deposited the entire award amount along with interest amounting to Rs.8,51,486/- with UCO Bank, Delhi High Court Branch in terms of the order dated 27th November, 2009.

10. The UCO Bank is directed to release a sum of Rs.1,51,486/- to respondent No.1 by transferring the said amount to his Saving Bank Account.

11. The remaining amount of Rs.7,00,000/- be kept in fixed deposit with UCO Bank as per the details given hereunder:-

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

(ii) Fixed deposit for Rs.50,000/- in the name of respondent No.1 for a period of one and a half years.

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

respondent No.1 for a period of seven years.

(xiv) Fixed deposit for Rs.50,000/- in the name of respondent No.1 for a period of seven and a half years.

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

13. Withdrawal from the aforesaid accounts shall be permitted to claimant/respondent No.1 after due verification and the Bank shall issue photo Identity Card to claimant/respondent No.1 to facilitate identity.

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

15. The original fixed deposit receipts shall be retained by the Bank in the safe custody. However, the original Pass Book shall be given to claimant/respondent No.1 along with the photocopy of the FDRs.

16. The original fixed deposit receipts shall be handed over to claimant/respondent No.1 at the end of the fixed deposit period and the maturity amount be paid by transferring the same to the Saving Bank Account of claimant/respondent No.1.

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 claimant/respondent No.1, the Bank shall transfer the Savings Account to any other branch of UCO Bank according to his convenience.

20. Claimant/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.

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

22. 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.

JANUARY 11, 2010
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J.R. MIDHA, J