

REPORTED

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

+ MAC.APP. 562/2004 and CM No.16111/2004

ORIENTAL INSURANCE CO.LTD. Appellant

Through: Mr. Madhurendra Kumar,
Advocate

versus

ROHIT KUMAR SINGH & ORS. Respondents

Through: Mr. M.M. Singh, Advocate

% Date of Decision : March 31, 2011

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

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?

J U D G M E N T

: REVA KHETRAPAL, J.

1. This appeal seeks to impugn the judgment and award dated 18.09.2004 passed by the learned Motor Accident Claims Tribunal awarding a sum of ₹ 33,45,000/- (including the interim compensation of ₹ 25,000/-) to the respondent No.1/claimant along with interest at

the rate of 9% per annum from the date of the institution of the claim petition till the date of realisation.

2. The facts relevant for deciding the appeal as they emerge from the record are that on 27.12.2000, the respondent No.1/claimant along with his friend was travelling in a Maruti Esteem Car bearing No.DL-8C-A-2431, which was being driven by the respondent No.2 in a rash and negligent manner, without caring for the traffic rules. Resultantly, the respondent No.2 (the driver of the car) could not stop his car at the ESI crossing, between Sector-21A, 22, 24 and 25A, Noida, U.P. and dashed into another vehicle (Tata-407) bearing No.DL-1L-A-5057, which was being driven by the respondent No.4, and which was owned by the respondents No.5 and 6. As a result of the accident, the respondent No.1 and the other occupants of the car sustained grievous injuries. The respondent No.1 was taken to Kailash Hospital and Research Centre at Noida in an unconscious state, where he remained in the ICU from 27.12.2000 to 24.02.2001 and thereafter in the hospital till 21st March, 2001.

3. It is the case of the respondent No.1/claimant that as a result of the said accident he sustained grievous brain injuries and is on bed till date, and his treatment is still continuing. It is further the case of the respondent No.1 that he has become permanently disabled and has developed a squint in his eyes and is not able to either walk or talk properly. It is asserted that he was a bright student, 23years of age, and had passed his B.Sc. from the Delhi University in the year 1999 whereafter he had undergone Medical Transcription Course, and was working in an office on a remuneration of ₹ 7,000/- per month. It is claimed that his income would have increased in the future. It is also claimed that his sister is a doctor by profession. The prayer in the claim petition is for the award of compensation in the sum of ₹ 50 lakhs in favour of the respondent No.1 and against the remaining respondents as well as the appellant – Insurance Company.

4. The respondents No.2 and 3, in their written statement, stated that the accident had taken place due to the rash and negligent driving of the driver of the other vehicle, viz. the Tata-407 and that the liability to pay compensation was only of the latter. The said

respondents further asserted that the accident did not take place due to the fault of the respondent No.2 and the petition was, therefore, liable to be dismissed. On merits, all the averments contained in the petition were denied, though it was admitted that the Esteem Car was being driven by the respondent No.2.

5. The appellant, the insurer of the Esteem Car (the respondent No.3 in the claim petition), also claimed in its written statement that it was not liable to pay compensation as the accident had taken place due to the negligent driving of the driver of the Tata-407. On merits, it denied all the averments contained in the petition, though admitted that Maruti Esteem Car bearing No.DL-8C-A-2431 was insured with it on the date of the accident.

6. The respondents No.4, 5 and 6, who were subsequently impleaded as parties in the claim petition, in their written statement, took the stand that the name of the respondent No.6 was put in the Registration Certificate of the vehicle, viz. Tata-407, as the actual owner of the said vehicle, Jai Singh (the respondent No.5) was old and unable to appear in the Court for payments of challans, etc. On

merits, all the averments contained in the petition were denied and it was denied that the accident had taken place due to the fault of the driver of the Tata-407, i.e., the respondent No.4.

7. Initially, on the pleadings of the parties, the following issues were framed for consideration:-

- “(i) Whether Rohit Kumar Singh received injuries in a motor vehicular accident dated 27.12.2000 due to rash and negligent driving of Esteem Car No.DL-8C-A-2431 by the respondent No.1 – Ajay Kumar?*
- (ii) Whether the respondents are not liable to pay the compensation as claimed?*
- (iii) To what amount of compensation, if any, and from, is the petitioner entitled to receive?*
- (iv) Relief.”*

8. Subsequently, on the impleadment of the respondents No.4, 5 and 6 (impleaded as respondents No.4, 5 and 5A in the claim petition) by amendment of the petition, Issue No.1, as framed initially, was re-framed as under:-

“Whether Rohit Kumar sustained injuries in a motor vehicular accident on 27.12.2000 involving truck No.DL-1L-A-5057 and Esteem Car No.DL-8C-A-2431 which was being driven

by the respondent No.1 Ajay Kumar in a rash and negligent manner?”

9. The learned Claims Tribunal after discussing the evidence adduced by the parties on the aforesaid issue as re-framed came to the conclusion that the respondent No.1 had sustained grievous injuries on account of the motor vehicular accident on 27.12.2000, which was caused due to the rash and negligent driving of the Esteem Car by the respondent No.2 and the Tata-407 truck by the respondent No.4. In view of the fact that the Maruti Car was owned by the respondent No.3 and was insured with the appellant and the truck was owned by the respondents No.5 and 6, it held that the respondents No.2 to 6 along with the appellant were jointly and severally liable to pay the compensation. The Tribunal further held that since the appellant had failed to place on record the terms and conditions of the insurance policy, stated to be a comprehensive insurance policy, it had not been able to establish that it was not liable to the third party in accordance with the terms of the insurance policy. The Tribunal accordingly proceeded to compute the compensation payable to the respondent No.1 on the basis of the evidence adduced by the parties and awarded

a total compensation of ₹ 33,45,000/- (including the interim compensation of ₹ 25,000/-) along with interest at the rate of 9% per annum from the date of institution of the claim petition till the date of realisation payable by all the respondents in the claim petition, to be paid by the appellant – Insurance Company, though it was held entitled to recover 50% of the compensation amount from the respondents No.5 and 6. Aggrieved by the aforesaid findings of the Claims Tribunal, the appellant – Insurance Company has preferred the present appeal.

10. The main thrust of the appellant's counsel in the present appeal is that on the basis of the evidence adduced on behalf of the parties, it is apparent that the respondent No.4, being the driver of Tata-407, was solely responsible for causing the accident on account of his rash and negligent driving. He submitted that the Claims Tribunal has wrongly given undue weightage to the testimony of the respondent No.1/claimant over the testimony of the respondent No.2 (the driver of the Maruti Esteem Car), who was produced in the witness box by the appellant – Insurance Company. It is further submitted by the

learned counsel for the appellant – Insurance Company that though the respondent No.1/claimant testified that the respondent No.2 was heavily drunk at the time of the accident, the medico-legal certificate of the respondent No.2 was not produced in evidence to substantiate the aforesaid fact. In fact, the learned Tribunal observed that there was no cogent evidence on record to show that the respondent No.2 was driving in a drunken state at the time of the accident.

11. The learned counsel for the appellant also submitted that the respondent No.2 had deposed that the said accident was caused as his vehicle, i.e., the car which he was driving, was hit in the centre of the left side by the Tata-407, at the material point of time. He had also deposed that there was heavy fog at that time and the accident took place due to the rash and negligent driving of the respondent No.4, who was driving the truck Tata-407 at a very high speed and the headlight of the truck was also not in a working condition. The said deposition of the respondent No.2 not having been challenged or rebutted by the respondent No.4, it was evident that only the respondent No.4 was negligent at the material point of time in causing

the accident which resulted in grievous injuries on the person of the respondent No.1. Finally, it was contended that no evidence having been led on behalf of the respondent No.4, the driver of Tata-407 truck, an adverse inference has to be drawn against the respondent No.4. This assumed importance in the face of the testimony of the respondent No.2, who had deposed that the accident was caused due to the rash and negligent driving of the respondent No.4.

12. Having considered the rival contentions of the parties on this aspect of the matter, in the backdrop of the evidence adduced by the parties and the findings rendered thereon by the learned Tribunal, I am of the view that the findings of the Tribunal on this issue cannot be faulted. The claimant, who appeared in the witness box as PW1, claimed that the accident was caused due to the rash and negligent driving of the Esteem Car by the respondent No.2–Ajay Kumar, in a rash and negligent manner, without caring for the traffic rules, as a result of which it dashed against another vehicle, viz. Tata-407 truck, at the ESI crossing, near Sectors-21A, 22, 24 and 25A, Noida. An FIR No.307/2000 under Sections 279/338/408 IPC was registered at

P.S. Sector-24, Noida, certified copy of which was on record. In cross-examination, the respondent No.1/claimant, however, admitted that the truck hit into the front left side of the car, where he was seated. The respondent No.2–Ajay Kumar, who was examined by the appellant – Insurance Company as R3W3, on the other hand, deposed that on 27.12.2000 at about 10.15 p.m., he alongwith Deepak and Vijay, was travelling in the Maruti Esteem Car at a slow speed as there was a turn. When he gradually took the said U-turn, a Tata-407 truck came from the opposite side and hit into the left centre of the car. He further deposed that there was heavy fog at that time and the accident took place due to the negligence of the driver of the Tata-407 truck, who was driving the truck at a high speed and his headlight was also not working.

13. From the testimony of the aforesaid two witnesses, namely, PW1, the claimant (the respondent No.1 herein) and R3W3 Ajay Kumar (the respondent No.2 herein), it clearly emerges that the truck Tata-407 hit the left centre portion of the car. This fact is also borne out by the site plan, certified copy of which is Ex.PW1/A. A perusal

of the site plan also clearly shows that the accident took place almost precisely in the middle of the crossing and there is no U-turn shown near the scene of the accident. In fact, as noted by the Tribunal, it took place at the crossing where the four roads leading to the four Sectors of Noida meet. The testimony of the respondent No.2 to the extent that there was a U-turn and that he was manoeuvring the car at a slow speed of 5-10 kms. per hour in order to negotiate the U-turn when the truck driven by the respondent No.4 came at a high speed and hit the car is, therefore, altogether falsified by the site-plan.

14. Adverting now to the testimony of the injured/respondent No.1, while examining himself as PW1, the respondent No.1 alleged that the respondent No.2 was heavily drunk at the time of the accident. The respondent No.2, on the other hand, in his testimony altogether denied that he was under the influence of alcohol. The respondent No.1 deposed in his testimony that all the other occupants of the car had run away from the spot, while the respondent No.2 deposed that they were all injured and were taken to hospital, a fact which is also mentioned in the First Information Report. The respondent No.1

stated that the accident was the outcome of the high speed and reckless driving of the respondent No.2, while the respondent No.2 squarely placed the blame for the accident at the door of the respondent No.4. The respondent No.4, who was the driver of the truck Tata-407, though admitted the factum of accident in the written statement did not challenge the testimony of either PW1 or that of R3W3 in any manner.

15. On the basis of aforesaid evidence, there is no manner of doubt that the Tata-407 truck had hit into the left centre of the Esteem Car in the middle of the intersection of four roads, which clearly shows that the driver of the said truck was driving in a rash and negligent manner. At the same time, it cannot be lost sight of that the respondent No.2 was also negligent in not keeping a look-out that no vehicle was coming from the other roads at the intersection. The respondent No.2 himself deposed that there was heavy fog, and even otherwise, it can safely be presumed that on 27th December, 2000 at 10.15 p.m., there must have been heavy fog. Thus, it was all the more incumbent upon the respondent No.2 to have crossed the intersection

carefully. The testimony of the respondent No.2 with regard to the U-turn also stands falsified by the site plan corroborated by the testimony of the respondent No.1, which shows that there was no U-turn and the accident took place at an intersection. Then again, the respondent No.2 would have us believe that he was negotiating a U-turn at the speed of 5-10 kms. per hour and the speed of the truck was more than 100 kms. per hour as the car was pushed and dragged to a great distance. This, again, is not borne out by the site plan that the car was dragged to a distance, though, it is mentioned in the First Information Report that the car was badly damaged, which shows that the truck was being driven at a very high speed. In the circumstances, the Tribunal, in my view, rightly concluded that the accident had taken place as the speed of both the vehicles, i.e., the Maruti Esteem car and the truck was very high and the drivers of both the vehicles failed to take due care and caution while crossing the intersection in the late hours of the cold foggy winter evening. Clearly, therefore, it is a case of composite negligence of the respective drivers of the Maruti Esteem Car and of the Tata-407 truck. The Tribunal, though

has held it to be a case of contributory negligence, the aforesaid finding cannot be sustained as, quite clearly, the injured had no role to play in the causation of the accident.

16. The respondents No.2 to 6 and the appellant herein have thus rightly been held to be jointly and severally liable to pay the compensation to the respondent No.1, who has been given the choice to recover it from anyone of them or from all of them. The reliance placed by the Tribunal in this regard on the judgment of the Karnataka High Court rendered in *The Madras Motor and General Insurance Co. Ltd. and Anr. vs. Nanjamma and Ors.*, 1977 ACJ 241, the Punjab and Haryana High Court in *Narinderpal Singh vs. The Punjab State and Ors.*, 1989 ACJ 106 and the Delhi High Court in the case of *Smt. Angoori Devi and Ors. vs. Shri Megh Raj and Ors.*, 2003 ACJ 293, clinches the matter.

17. The common thread running through all the aforesaid judgments is that where a collision has occurred on account of the blameworthy conduct of two vehicles, it is not necessarily implied that the loss must automatically be distributed between the parties in

the same proportion. But in a case where both of them were equally responsible for the accident and there is no evidence before the Court as to whether any of them could have by acting properly avoided the accident, the victim/victims are entitled to claim compensation in equal proportions from the owner, driver and insurer respectively of both the vehicles. It is the duty of the Tribunal to apportion the compensation even in the case of joint and several liability on account of composite liability and in fact the Tribunal is under a statutory mandate to do so. At the same time, the Tribunal, by undertaking the exercise of apportioning liability, only specifies the *inter-se* liability of owners/drivers of vehicles found negligent in causing the accident and this does not affect the claimant/s in any way. There is no problem where both sets of tortfeasors would satisfy the award. But if one of them failed, the claimant would be well within his rights to recover the whole amount from the other, leaving such party to claim rateable distribution from the other.

18. The further finding of the learned Tribunal that the insurance policy of the car Ex.R3W1/1 being a comprehensive insurance policy,

the insurance company was liable to pay compensation for the injury sustained by any occupant of the said car while travelling in the car has not been challenged before this Court and is, therefore, not being dealt with.

19. Dealing now with the quantum of compensation awarded to the respondent No.1, the respondent No.1 as PW1 deposed that he had sustained severe damage to his brain and the brain stem in the accident which took place on 27.12.2000, besides abrasions on many parts of his body, as a result of which he remained in the ICU from 27.12.2000 to 24.02.2001 and thereafter in the hospital till 21st March, 2001 (wrongly mentioned as 31st March, 2001 in his testimony). He further deposed that he was on bed till date and was still undergoing physiotherapy, besides other medical treatment. He proved on record his medical treatment papers as Ex.PW1/I, Ex.PW1/L and Ex.PW1/M.

20. The testimony of PW1 is corroborated by the testimony of PW2 and PW3. PW2, Medical Record Officer from Kailash Hospital and Research Centre proved on record the contents of two medical

files of the respondent No.1 as Ex.PW2/1 and Ex.PW2/2, while PW3 Dr. B.K. Patta, CMO from Kailash Hospital and Research Centre proved the summary report of the injured as Ex.PW3/2. As noted by the learned Tribunal, the MLC of Kailash Hospital shows that the respondent No.1 had sustained a cut in the parieto-occipital region and the C.T. Scan reveals that he had bilateral baso-frontal and right parital concussions and his condition was stated to be grievous and he was put on ventilator. The case summary of the respondent No.1 (Ex.PW1/I) mentions that on admission, he was comatose and had laboured respiration, his right pupil was dilated and fixed and the left pupil was not reacting. There was paucity of limb movements and extensor posturing of limbs, trachae was intubated orally and controlled mechanical ventilation was initiated. He was kept in ICU till 24th February, 2001, whereafter he was shifted to a private room in the same hospital. The C.T. Scan of the brain revealed evidence of diffused axonal brain injury. He was managed conservatively by a team of Neuro-Physicians, Neuro-Surgeons and Critical Care Specialists throughout his stay in the hospital. At the time of

discharge from the hospital, he was mute, had asymmetrical quadriplegia and followed occasional verbal commands. He was discharged with advice for domiciliary treatment and was also advised review in OPD after 15 days.

21. On the basis of the aforesaid medical record, the learned Tribunal observed that the respondent No.1's treatment had continued till date and he had throughout been on regular physiotherapy, besides being on medication from time to time. As regards the expenditure incurred by him on his medical treatment for the period 27.12.2000 to 24.02.2001 in Kailash Hospital, Noida, the Tribunal noted that a sum of ₹ 3,54,203/- was directly paid by the Department of Information and Technology, where the father of the respondent No.1 was employed, as is borne out by letter dated 16.03.2001 (Ex.PW1/J); the medical expenses for the period between 24.02.2001 till 21.05.2001 stood paid by Oriental Insurance Company under a Mediclaim policy, which was Ex.PW1/K; for the period from 22nd May, 2001 to 10th July, 2001, the Oriental Insurance Company had paid a sum of ₹ 71,606/- on account of his treatment for the

aforesaid period. The Tribunal further noted that it was admitted by the respondent No.1 that a total sum of ₹ 5,25,000/- had been received on account of his treatment, though, he deposed that a sum of ₹ 10 lakhs had been expended by him and that he had incurred expenditure of about ₹ 2,60,000/- for his further medical treatment, the bills whereof were collectively marked as Ex.PW1/L. The Tribunal noted that the medical bills Ex.PW1/L (collectively) were in the sum of ₹ 2,60,758/- and the bills Ex.PW4/B1 to Ex.PW4/B29 were for about ₹ 22,286/-. The unpaid bills were, therefore, in the sum of ₹ 2,83,044.50, for which a sum of ₹ 3 lakhs was awarded by the Tribunal for the treatment undergone by the respondent No.1 till date. I see no reason to interfere with this amount awarded by the Tribunal towards medical treatment already undergone by the respondent No.1.

22. As regards his future medical expenses, the learned Tribunal has awarded a sum of ₹ 3 lakhs on the basis of the record which shows that the respondent No.1 requires regular physiotherapy which costs him ₹ 6,000/- to ₹ 7,000/- per month and is also advised to take

medicines regularly. On the premise that a sum of ₹ 5,000/- per month would be spent in future by him on his treatment, the Tribunal has considered it proper to award a lumpsum of ₹ 3 lakhs at this stage, which would generate some regular income for his continuous future treatment. No cogent reason has been pointed out to me to enable me to interfere with this amount awarded towards the future treatment of the respondent No.1.

23. Adverting to the aspect of loss of future earnings, the learned counsel for the Insurance Company has strongly urged the following two grounds. The first is that the disability of the respondent No.1 could not have been assessed as 100%, as was done by the Tribunal, since the disability certificate showed that the disability sustained was to the extent of 45% of the whole body and, thus, the Tribunal erred in taking the disability to be 100% and awarding a sum of ₹ 21,45,000/- towards loss of future earning. The second ground urged on behalf of the Insurance Company, relying upon the judgment of the Supreme Court in *New India Assurance Co. Ltd. vs. Charlie and Anr.*, reported in (2005) 10 SCC 720, is that in a case of 100%

disability the manner of arriving at the damages is to ascertain the net income of the claimant and to deduct therefrom such part of his income as he was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and then to capitalize the net income by multiplying it by a figure representing the proper number of years' purchase. It is submitted that no deduction for personal expenses having been made by the Tribunal, the award on this count was unsustainable.

24. It is proposed first to deal with the contention of the learned counsel for the appellant that the sum of ₹ 21,45,000/- awarded to the respondent No.1 towards loss of income is wholly without basis. In this context, there is on record the testimony of the respondent No.1 himself that he was working with M/s. Buildcon Management Services India Pvt. Ltd. on a consolidated salary of ₹ 7,000/- per month, which stands corroborated by the testimony of PW6 Anil Kumar, Manager (Accounts) in M/s. Buildcon Management Services India Pvt. Ltd. The latter has proved on record the salary certificate of the respondent No.1 as Ex.PW1/B. This witness further deposed

that had the respondent No.1 continued in service, his salary would have been increased by 10% to 12% per annum and he would have drawn about ₹ 10,000/- per month as on the date of recording of his evidence. In his cross-examination, the witness clarified that the respondent No.1 was in permanent employment. The testimony of this witness is unchallenged on record and thus it can safely be concluded, as has been done by the learned Tribunal, that the respondent No.1 was drawing a salary of ₹ 7,000/- per month at the time of the accident. The learned Tribunal has thereafter held that the respondent No.1 was a young boy of 23years and it can easily be presumed that his income would have doubled in future and would have become ₹ 14,000/- per month. His average monthly income could thus be calculated by adding ₹ 14,000/- to ₹ 7,000/-, which comes to ₹ 21,000/- and dividing it by 2, which comes to ₹ 10,500/- per month or ₹ 1,26,000/- per annum.

25. The Tribunal further observed that though, as per the disability certificate on record, the respondent No.1 had been certified to be permanently disabled to the extent of 45% in relation to his whole

body on account of traumatic brain injury with left side hemiparesis and dysanthia, he had, in fact, been rendered 100% disabled as he was incapable of doing any work, his speech and eye-sight having been affected, and as he had poor coordination of motor facilities and was unable to walk properly. In the circumstances, he had suffered total loss of earning capacity. Thus taking the multiplicand to ₹ 1,26,000/- and adopting the multiplier of 17, the Tribunal held the respondent No.1 to be entitled to a sum of ₹ 21,42,000/- towards loss of income, which it rounded off to ₹ 21,45,000/-.

26. There is no manner of doubt that in the instant case the injured has suffered severe damage to his brain resulting in impairment of his motor facilities to the extent that he is unable to walk or talk properly, rendering him unfit for any employment. The Tribunal, therefore, in my view, was right in assessing the loss of earnings to be 100%. Reliance was placed by the learned counsel for the respondent No.1 in this regard upon the following judgments:-

- (i) ***Pratap Narain Singh Deo vs. Srinivas Sabata and Anr., AIR 1976 SC 222***, wherein the expression “total disablement” has

been interpreted to mean such disablement as incapacitates the injured for all work which he was capable of performing at the time of the accident resulting in such disablement. In this case, the injured was a carpenter by profession, who had suffered loss of the left hand above the elbow, rendering him unfit for the work of carpenter. A four-Judge Bench of the Supreme Court held it to be a case of total disablement.

(ii) ***United India Insurance Co. Ltd. vs. Rameshbhai Somabhai Vankar and Ors., 2007 ACJ 2029***

A Division Bench of the Gujarat High Court in this case dismissed the appeal of the appellant – Insurance Company which sought to assail the judgment of the Tribunal on the ground that the Tribunal had committed grave error in coming to the conclusion that the total disability of the claimant was 50% for the body as a whole and contending that the Tribunal ought not to have assessed the disability of the claimant more than 25% of the body as a whole of the claimant. The Division Bench, observing that due to the accident the life of a young

man had become miserable, his vision of one eye was seriously affected, he was not able to speak and his entire body starts trembling after sometime, held that the Tribunal had committed no error in assessing the disability at 50% for the body as a whole of the claimant. In fact, it was 100% disability as the claimant was not able to do anything in his life and perhaps had to live the rest of his life like an animal.

(iii) ***Oriental Insurance Company Limited vs. Mohan and Ors.,
III (2003) ACC 649***

In this case, though the doctor had assessed the disability to the extent of 48%, a Division Bench of the Madras High Court observed that it was for the authority concerned to assess the loss of earning capacity on the basis of the available material, namely, the medical certificate, disability certificate, evidence of doctor, evidence of injured applicant, avocation and the nature of work to be done in future. Taking note of the fact that the injured was a driver by profession, the Division

Bench held his loss of earning capacity to be to the extent of 100%.

(iv) ***Rayapati Venkateswara Rao vs. Mantai Sambasiva Rao and Anr., II (2001) ACC 300***

In this case, a learned Single Judge of the Andhra Pradesh High Court, after examining the entire gamut of case law, held that even though according to the doctor the physical disability sustained by the injured was 20-25%, he had lost his 100% earning capacity and was entitled for 100% compensation. In this case, the injured was a cleaner, who was rendered incapable of performing his duty as a cleaner, as he was performing prior to the accident, as he had to use a stick to walk after the accident.

27. In a recent judgment rendered by the Supreme Court in Civil Appeal No.8981/2010 [arising out of SLP(C) No.10383/2007] titled ***Raj Kumar vs. Ajay Kumar and Anr.*** decided on 18.10.2010, the Hon'ble Supreme Court unequivocally held that where the claimant suffers a permanent disability as a result of injuries, the assessment of

compensation under the loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. What is required to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured, and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money to arrive at the future loss of earnings by applying the standard multiplier method used to determine loss of dependency.

28. Applying the aforesaid dicta enunciated by the Hon'ble Supreme Court, in the present case, the functional disability of the respondent No.1, in my view, was rightly assessed to be 100% by the learned Tribunal. As regards the calculation of future loss of earnings of the respondent No.1, there is unrebutted evidence on record to show that the income of the injured-claimant at the time of the accident was ₹ 7,000/- per month. Adding 50% to the said income towards the future prospects of the injured-claimant, in consonance

with the judgment of the Supreme Court rendered in the case of *Smt. Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr., (2009) 6 SCC 121*, the net income of the injured-claimant is assessed to be in the sum of ₹ 10,500/- per month, i.e., ₹ 1,26,000/- per annum. The multiplier applicable in the instant case would be the multiplier of 18 in accordance with *Sarla Verma* case (*supra*), and thus calculated, the loss of earnings would be ₹ 22,68,000/-. The Tribunal has, however, taken the multiplier of 17 and I see no reason to interfere with the multiplier adopted by the Tribunal. The loss of earnings of the respondent No.1 are accordingly held to be in the sum of ₹ 21,45,000/-, as assessed by the Tribunal.

29. Adverting to the second ground sought to be urged by the learned counsel for the appellant that a deduction of one-third ought to have been made towards the personal and living expenses of the injured, I am afraid this contention is devoid of substance and cannot be accepted. The reliance upon *Charlie's* case (*supra*) is also misplaced. All that was held in the said case was that in a case where the injured had suffered 100% disability, the logic applicable to a

deceased can, in appropriate cases, taking note of all relevant factors, be reasonably applied. The said judgment is, therefore, of no assistance to the appellant and as a matter of fact in a subsequent decision rendered by the Hon'ble Supreme Court in ***Oriental Insurance Company Ltd. vs. Ram Prasad Varma and Ors., (2009) 2 SCC 712***, the following pertinent observations were made:-

“9. One-third amount is deducted from computation of compensation from the total income on the premise that some expenses were necessary for one's own survival. Incidentally, we may notice that in the note appended to the Second Schedule, the amount of compensation arrived at in the case of fatal accident claims is required to be reduced by one-third in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. A person, although alive, but when he is not in a position to move and even for every small thing he has to depend upon the services of another, in our opinion, a direction to deduct one-third of the amount from his total income need not always be insisted upon.

*10. Our attention, however, has been drawn to a decision of this Court in ***New India Assurance Co. Ltd. v. Charlie*** wherein one-third was directed to be deducted towards personal expenditure; we do not find that any legal principle was laid down therein. It also does not appear that the premise on which such*

deduction is allowed and what would happen in a case, where such a premise does not exist, did not fall for consideration. In Charlie, this Court itself opined that in a case, where the injured had suffered 100% disability, the legal principle for determination of compensation applicable to a deceased can, in appropriate cases, taking note of all relevant factors, be reasonably applied even in a case of totally permanent disabled person.”

30. In **Raj Kumar’s** case (*supra*), it was again clarified that in the case of an injured-claimant with a disability, what is calculated is the future loss of earning of the claimant, payable to the claimant (as contrasted from loss of dependency calculated in a fatal accident, where the dependent family members of the deceased are the claimants). Therefore, the Court held, there is no need to deduct one-third or any other percentage from out of the income, towards the personal and living expenses. The Tribunal in the present case, therefore, rightly refused to deduct one-third for the personal expenses of the injured-claimant.

31. As regards the other heads of claim, the Tribunal awarded a sum of ₹ 25,000/- towards conveyance charges and ₹ 25,000/- towards special diet. A sum of ₹ 50,000/- was awarded towards

attendant charges, taking into account the leave certificate (Ex.PW1/N) of the father of the respondent No.1, who had to avail leave of 54 days from his office, and his payslip Ex.PW1/G, which showed his income to be ₹ 17,389/- per month. Apart from this, a sum of ₹ 2 lakhs was awarded to the respondent No.1 for the pain and agony suffered by him and a sum of ₹ 3 lakhs towards loss of future prospects, loss of marital prospects and, loss of amenities and enjoyment of life, i.e., in all ₹ 33,45,000/-, including the sum of ₹ 25,000/- paid by way of interim compensation.

32. The award of the sum of ₹ 2 lakhs towards pain and suffering endured by the respondent No.1 and the further sum of ₹ 3 lakhs in all towards loss of future prospects, loss of amenities of life, and loss of marital prospects appears to be justified in the instant case. The injured was a young man of 23 years at the time of the accident and his whole life has been ruined by the accident and the severe damage caused thereby to his brain, speech, eye-sight and motor facilities. He is unable to engage in any work as he can neither walk nor talk

properly and consequently, he is unmarried and his existence for all practical purposes is a futile one.

33. In view of the aforesaid, the award of the Tribunal is upheld with the modification that interest will be paid at the rate of 7.5% per annum by the appellant instead of 9% per annum as awarded by the learned Tribunal.

34. The appeal is disposed of accordingly. CM No.16111/2004 and CM No.2422/2005 also stand disposed of.

**REVA KHETRAPAL
(JUDGE)**

March 31, 2011
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