

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

% *Date of Judgment: 12.09.2011*

+ **MAC Appeal No 100/2010 & CM Nos.11550-51/2010**

ORIENTAL INSURANCE COMPANY Appellant
Through: Mr. L.K. Tyagi, Advocate.

Versus

JAGDISH KUMAR & OTHERS Respondents
Through: Mr.Sahil Aeron, Advocate

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

1. The Award impugned before this Court is the Award dated 02.12.2009 vide which a total compensation in the sum of Rs.8,37,236/- along with interest @ 7.5% per annum had been granted in favour of the claimant/petitioner. The claimant was the injured himself; he had suffered an accident on 08.05.2007 near Balaji Hospital, Paschim Vihar, when he was getting ready to

board a bus; the bus had run over his left foot; because of this injury, his left foot had to be amputated; he had suffered permanent disability of 60%.

2. Record shows that the petitioner was doing the job of a helper in a DTC bus; on the fateful day, the petitioner was getting the bus reversed when all of a sudden the driver turned the bus without seeing the indication given by the petitioner and as a result, the bus ran over the left foot of the petitioner; he was taken to the Balaji Hospital where his foot had to be amputated. FIR under Section 279/338 of the Indian Penal Code had been registered against the driver. Oral and documentary evidence was led pursuant to which the aforementioned amount had been awarded in favour of the petitioner.

3. The grievance of the Insurance Company is on three counts; contention is that the future prospectus have been considered on the minimum wages of the petitioner when in view of the judgment of the 2009 (6) Scale 129 Sarla Verma & others Vs. Delhi Transport Corporation and another, future prospects should not have been considered. The awarded amount of Rs.4,12,236/- under the head of 'loss of earning capacity' is thus liable to be set aside. The second grievance is that the amount awarded under the head of non-pecuniary damages i.e. under the

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claim listed at serial Nos. 6, 7, 8, & 9 are also on the higher side; these amounts total a sum of Rs.3.5 lacs; there was no evidence of future expenses for the change of artificial limb and the sum of Rs.1 lac granted on this count also suffers from an infirmity. This amount also being on the higher side is liable to be set aside. The last grievance of the petitioner is that the driving license of the driver had expired and this has been noted by the Tribunal in para 47; attention has been drawn to this finding whether the Tribunal had noted that the driving license of the driver had expired on 14.01.2007 and as such on the date of accident which was on 08.05.2007, the respondent did not have any valid or effective driving license. Submission is that in view of judgment of the Apex Court reported in IV (2008) ACC 714 (SC) National Insurance Company. Ltd. Vs. Vidhyadhar Mahariwala & others, the Insurance Company is not liable in any manner; although admittedly recovery rights had been granted in favour of the Insurance Company yet the contention of the appellant is that no liability could have been foisted upon the Insurance Company in any manner.

4. Arguments have been refuted.

5. This is an injury case; compensation for loss of earning capacity has been computed at Rs.4,12,236/-. This figure has
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taken inflation and index price rise into account. Guidelines in injury cases have been laid down by the Apex Court for calculating compensation under the head of 'loss of future income' in the case of Raj Kumar Vs. Ajay Kumar & Anr.,(2011) 1 SCC 343. In this case the Apex Court had noted as follows:

"General principles relating to compensation in injury cases

The provision of the Motor Vehicles Act, 1988 ('Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his liability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. (See C.K.Subramonia Iyer, v. T. Kunhikuttan Nair- AIR 1970 Supreme Court 376, R.D. Hattangadi v. Pest Control (India) Ltd.- 1995 (1) SCC 551 and Baker v. Willoughby -1970 AC 467)."

The victim in this case has suffered the amputation of his left foot; his permanent disability had been recorded at 60%. The formula for the calculation of his compensation under the head of 'loss of earning capacity' at ₹4,12,236/- suffers from infirmity. It is not in accordance with the guidelines laid down in Raj Kumar
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(supra). The inflated figure of ₹5205/- per month was not the correct approach; minimum wages criteria had been applied which on the date of the accident were ₹3270/- per month. Thus the calculated figure would read as $₹3270 \times 12 \times 11 \times 60 / 100 = ₹2,58,984/-$. This figure of ₹2,58,984/- is substituted for ₹4,12,236/- under the head of 'loss of earning capacity'.

6. The sum of ₹3.5 lacs awarded under the head of 'non-pecuniary damages' is a fair discretion exercised by the Tribunal; PW-2 the Doctor had testified on oath that an artificial limb is to be affixed; without which the victim would not be able to walk. The Apex Court in the case reported in III (2002) ACC 766 (SC) Naggapa Vs. Gurudayal Singh & Others while dealing with the case of an artificial implant had noted that an artificial implant is required to be changed every 2-3 years; in that case, a sum of ₹1 lac on the count of future medical expenses for the change of artificial limb had been granted. This guideline has been followed by the Tribunal in awarding a sum of ₹1 lac under the head of 'future expenses for change of artificial limb'.

7. The Courts have time and again noted that the physical frame work which has been lost of a permanently disabled victim can never be reframed; no amount of monetary compensation can compensate him for this battering and shattering of his physical

frame; the object of compensation is to place the claimant as far as possible in the same position, financially as he was before the date of accident; the Supreme Court had made these observations in the case of AIR 2003 SC 4172 Divisional Controller, KSRTC Vs. Mahadeva Shetty & Another; non-pecuniary damages thus awarded in the sum of ₹3.5 lacs under the four different heads i.e. compensation for 'future expenses for change of artificial limb', compensation for 'pain and suffering', compensation for 'loss of amenities of life' and compensation for 'physical disfigurement due to permanent disability' do not call for any interference.

8. The last argument urged by learned counsel for the appellant is propounded on the judgment of the Apex Court reported in IV (2008) ACC 714 (SC) National Insurance Co. Ltd. Vs. Vidhyadhar Mahariwala & Others. This judgment of the Apex Court had noted with approval the observations made by the earlier Bench of the Supreme Court in the case of II (2007) ACC 63 (SC) Ishwar Chandra & Others Vs. Oriental Insurance Co. Ltd. & others. The landmark judgment dealing with the defence put up by the Insurance Company as to whether their liability can be avoided in view of a fake or invalid driving license had been dealt with by the Supreme Court in the case of National Insurance Company Limited Vs. Swaran Singh & others 1 (2004) ACC 1 (SC).

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In the case of Ishwar Chandra (Supra) the observations made by the Apex Court in Swaran Singh (Supra) were approved. The appeal of the owner Ishwar Chandra had been dismissed; this was a challenge made by the owner of the vehicle qua the recovery rights which had been granted to the Insurance Company; appeal has been dismissed.

9. In this case also, recovery rights have been granted to the owner; by the impugned Award, the Insurance Company has been directed to pay compensation to the claimants with liberty to recover it from the owner of the offending vehicle; the recovery rights granted to the Insurance Company does not call for any interference. Appeal is modified only qua the claim of 'loss of earning capacity' as noted supra. No other modification is called for. Appeal disposed of in the above terms.

INDERMEET KAUR, J.

SEPTEMBER 12, 2011

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