

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

Reserved on: 30th November, 2011

Pronounced on: 8th December, 2011

+ **MAC APP. 196/2010**

NATIONAL INSURANCE CO. LTD. Appellant
Through: Ms. Shantha Devi Raman, Advocate

Versus

PREM SINGH & ORS. Respondents
Through: Mr. S.N. Parashar, Advocate for
respondent No.1.

CORAM:
HON'BLE MR. JUSTICE G.P. MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appellant impugns the award passed by the Ld. Motor Accident Claim Tribunal (herein after referred to as 'the Tribunal') dated 11.12.2009 whereby the Claimant (Respondent herein) was granted a compensation of ₹ 4,57,164/- on account of permanent disablement caused to his left lower limb due to the motor accident, which took place on 25.10.2005.
2. On 25.10.2005 at about 7 AM, Prem Singh (Respondent No.1 herein who was aged about 54 years and was self-employed as a TSR driver) was standing on the road close to his TSR near the G.T. Road Petrol Pump in front of Delhi Metro Station,

when a bus bearing Registration No.DL-1PA-3851 came from behind and struck him. He sustained injuries and also amputation of his (left) mid foot including three toes.

3. The contentions raised on behalf of the Appellant are: -
 - (i) That the Tribunal erred in taking the total disability of the Respondent No.1 to be 75% when the disability certificate clearly showed that the Respondent No.1 was disabled only to the extent of 40%. And in fact, the extent of disability should have been 20% in relation to the whole body.
 - (ii) That the injuries did not, in anyway, hamper the Respondent No.1 from driving the TSR and, therefore, there was no loss of future income to him.
 - (iii) That the Respondent No.1 failed to prove that the amputation of his toes resulted in loss of his income or that he was unable to drive the TSR because of his injury.
4. To the contrary in the Cross Objections filed by the Respondent No.1, it is contended that Trial Court erred in considering the functional disability of the Respondent No.1 to be 75%, instead of taking it to be 100%. It is, urged that the Trial Court wrongly, did not take into account Respondent No.1's future prospects for computing the compensation. Lastly, it was contended that the amount which was granted by the Tribunal under 'Non-Pecuniary' heads was on the lower side and the same needed to

be enhanced keeping in view the facts and circumstances of the case.

CONTENTION NO.(i) (ii) & (iii)

5. In *Raj Kumar v. Ajay Kumar*, (2011) 1 SCC 343 the Supreme Court laid down principles for computation of compensation for a disabled person. The relevant para of the report is extracted hereunder: -

“17. If a doctor giving evidence uses technical medical terms, the Tribunal should instruct him to state in addition, in simple non-medical terms, the nature and the effect of the injury. If a doctor gives evidence about the percentage of permanent disability, the Tribunal has to seek clarification as to whether such percentage of disability is the functional disability with reference to the whole body or whether it is only with reference to a limb. If the percentage of permanent disability is stated with reference to a limb, Tribunal will have to seek the doctor’s opinion as to whether it is possible to deduce the corresponding functional permanent disability with reference to the whole body and if so the percentage.

18. The Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who give ‘ready to use’ disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily giving liberal disability certificates to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of

such certificates. The Tribunal may invariably make it a point to require the evidence of the doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or discharge certificate will not be proof of the extent of disability stated therein unless the doctor who treated the claimant or who medically examined and assessed the extent of disability of the claimant, is tendered for cross-examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board (from a panel maintained by it in consultation with reputed local hospitals/medical colleges) and refer the claimant to such Medical Board for assessment of the disability.

“19. We may now summarise the principles discussed above:

- (i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.*
- (ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).”*

6. It is, therefore, settled that where the claimant suffers permanent disability as a result of an accident, the assessment of compensation under the head of loss of future earning would depend upon the effect and impact of such permanent disability on his earning capacity. In most of the cases, the percentage of economic loss, i.e. the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability – depending on the profession of the claimant.
7. In the present case the Respondent had suffered 40% disability in relation to his left lower limb, as mentioned in the disability certificate Ex. PW-1/1 and proved by PW1 Shri Prem Ram, Record Clerk from LBS Hospital. Keeping in mind that the Respondent was a TSR driver, the Trial Court erred in taking the total disability as 75% in relation to the whole body as the Respondent's injuries(i.e. amputation of his (left) mid foot including three toes) would not incapacitate him from driving the TSR. Moreover, as pointed out by the Counsel for the Appellant, the left leg of a person does not have any crucial role to play while driving a TSR, much less the mid foot or the toes. The Tribunal wrongly observed that a TSR driver needed to use his left foot for operating the brakes, when in fact in a TSR the brakes are on the right side, and therefore, the right leg is used to apply the brakes. Therefore, I am of the opinion that the

Tribunal erred in taking 40% disability in relation to the left lower limb as 75% disability in relation to the whole body.

8. Keeping in mind that the amputation of the left mid foot (including three toes) would have still decreased the efficiency and the overall capability of the Respondent No.1, as the driver of the TSR has to use his left leg for certain purposes such as ingress and egress out of the TSR, parking it and other miscellaneous work like its repair etc. – furthermore, the disablement would make it difficult for the Respondent No.1 to walk and run because of the chopping of the three toes and mid left foot. Therefore, I take the total functional disability resulting in the loss of earning capacity as 40% only.

COMPUTATION OF THE COMPENSATION:

9. The Respondent No.1's income was rightly taken by the Tribunal according to be minimum wages of a skilled worker, which was ₹ 3,589/- (on the date of the accident in the absence of any other evidence) and taking the disability to be 40% the amount works out as $\text{₹ } 1436/- \times 12 = 17,227/-$ per annum. Keeping in view the age of the Respondent No.1, I am of the opinion that no future prospects can be granted to him.
10. Applying the multiplier of '11' according to the age of the claimant the loss of future income (earning capacity) of the Respondent comes to ₹ 1,89,499/-. The compensation awarded towards non-pecuniary damages was on the lower side and needs to be enhanced considering the nature of injury and

permanent disability. Accordingly, I enhance the compensation towards pain and suffering from Rs. 25,000/- to ₹ 50,000/-; towards loss of amenities of life from ₹25,000/- to ₹1 lakh. I further grant a compensation of ₹25,000/- towards disfigurement of the body. The total compensation is tabulated as under:

S.No.	Heads	Awarded by Tribunal	Awarded by this Court
1.	Actual medical expense	₹ 25319/-	₹ 25319/-
2.	Loss of Actual Income	₹ 25,534/-	₹ 21,534/-
3.	Loss of future income	₹ 3,55,311/-	₹ 1,89,499/-
4.	Pain and Suffering	₹ 25,000/-	₹ 50,000/-
5.	Conveyance and Spl. Diet	₹ 5000/-	₹ 5000/-
5.	Loss of Amenities of Life	₹ 25,000/-	₹ 1,00,000/-
6.	Disfigurement		₹ 25,000/-
	TOTAL	₹ 4,57,164/- (rounded off ₹ 4,57,000/-)	₹ 4,16,352/-

11. The Respondent shall be entitled to a compensation of ₹ 4,16,352/- along with interest @ 7.5% per annum from the date of filing of the petition till the deposit of the amount in this

Court. Rest of the amount shall be refunded to the Appellant National Insurance Company along with interest if any.

12. 25% of the compensation along with proportionate interest shall be released to the Respondent No.1 forthwith.
13. Rest of the amount shall be held by way of Fixed Deposit Receipt in the name of Respondent No.1 for five years. Respondent No.1 shall not be entitled to premature and encashment of the FDR or any loan against it without the permission of this Court.
14. For the aforesaid reasons, the appeal is allowed in the above terms.

(G.P. MITTAL)
JUDGE

DECEMBER 8, 2011
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