

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

*Reserved on: 22<sup>nd</sup> November, 2011*

*Pronounced on: 25<sup>th</sup> November, 2011*

+ **MAC APP. 321/2009**

JAHEER AHMED ..... Appellant

Through: Mr. O.P. Mannie Advocate.

Versus

HARI SINGH & ORS. .... Respondents

Through: Mr. Rakesh Mittal Advocate for  
R-3/New India Assurance Co.Ltd.

**CORAM:**

**HON'BLE MR. JUSTICE G.P.MITTAL**

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

### **J U D G M E N T**

**G. P. MITTAL, J.**

1. The Appellant seeks enhancement of the compensation awarded by the Tribunal by an order dated 31.03.2009 amounting to ₹ 1,85,400/- extracted hereunder in a tabulated form:-

|                                            |            |
|--------------------------------------------|------------|
| Medicines and medical treatment            | ₹ 2,000/-  |
| Loss of earning capacity due to Disability | ₹ 92,400/- |

|                           |                     |
|---------------------------|---------------------|
| Loss of Income            | ₹ 21,000/-          |
| Pain and Sufferings       | ₹ 50,000/-          |
| Conveyance & Special Diet | ₹ 20,000/-          |
| <b>Total</b>              | <b>₹ 1,85,400/-</b> |

2. By the impugned award, the Tribunal found that the accident was caused on 22.06.2006 on account of rash and negligent driving of the Respondent No.1 Hari Singh while driving bus No. DL-1PB-5295 owned by Riyazuddin Ansari Respondent No.2 and insured by the New India Assurance Company Ltd.- Respondent No.3. It was held that the Appellant suffered 66% permanent disability in relation to his left upper limb which was taken as 30% in relation to the whole body. The Tribunal further held that the Appellant was running a shop to repair cycle rickshaw. The Appellant's income was claimed to be ₹ 5,500/- per month which was disbelieved by the Tribunal in the absence of any documentary evidence. The Tribunal took the minimum wages of a semi skilled person; applied the multiplier of 12 according to the Appellant's age; deducted one-third towards personal expenses and awarded ₹ 92,400/- towards loss of earning capacity. The Tribunal awarded ₹ 21,000/- towards loss of income for a period of six months. The Tribunal held that the Appellant was not entitled to a sum of ₹ 2,000/- for

purchase of medicines and medical treatment and ₹ 20,000/- spent on conveyance and special diet. Since the driving licence of Respondent No.1 expired on 27.03.2006 and was renewed only on 23.10.2006 after a gap of seven months thus, Respondent No.1 did not have effective and valid driving licence on 22.06.2006 i.e. the date of the accident. The Tribunal, therefore, gave the right of recovery of the compensation amount to Respondent No.3 from the owner of the offending vehicle i.e. Respondent No.2.

3. Learned counsel for the Appellant has raised the following grounds for enhancement of compensation:-
  - (i) The Tribunal committed an error in reducing the permanent disability from 66% to 30% while calculating the loss of earning capacity.
  - (ii) The Tribunal erred in deducting one-third of the income towards personal expenses as the same was not permissible in injury cases on the basis of *Raj Kumar v. Ajay Kumar & Anr. (2011) 1 SCC 343*.
  - (iii) The compensation awarded towards the non pecuniary damages was too meager and unreasonable.

#### **CONTENTION NO.1**

4. Appellant examined himself as PW-3 during inquiry before the Tribunal. He deposed that on account of the accident he

suffered serious head injury, intra condylar fracture left humerus grade IIIrd compound – treated with external fixator, fracture 3,4,5 and 6 ribs with minimal B/L Hemo thorax with flail segment (L), skin loss over left humerus, skin loss treated with skin grafting (SSG), abrasions and blunt injuries all over the body. He deposed that he was earning ₹ 5,500/- per month by repairing cycle rickshaws. He deposed that he could not perform the work of repairing cycle rickshaw as he could not lift weight with his left hand after the accident.

5. The Appellant examined PW-4 Dr. Manoj Kumar Goel, SR Department of Orthopedics, GTB Hospital Delhi to prove the Appellant's disability certificate Ex.PW-4/A. He deposed that the Appellant suffered 66% permanent disability in relation to his left upper limb. He deposed that the Appellant's condition was non progressive and was not likely to improve. In cross-examination on behalf of the Insurance Company, the witness deposed that the Appellant would not have any difficulty in walking, sitting or running. The quality of work however, would be affected as he suffered 66% disability of left upper limb. Thus, taking the doctor's statement that the Appellant would have no difficulty in walking, sitting or running, the Tribunal opined that the permanent disability vis-à-vis whole body could be considered to be just 30%.
6. In *Raj Kumar v. Ajay Kumar (supra)*, the Supreme Court went into the question of determining the loss of earning capacity and

held that the Tribunal should consider:-

- (i) *Whether the disablement is permanent or temporary;*
- (ii) *If the disablement is permanent, whether it is permanent total disablement or permanent partial disablement,*
- (iii) *If the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person.*

7. The Supreme Court gave certain instances that even in the case of serious permanent disability there may not be any loss of earning capacity. It would vary on the profession of the victim and the nature of injury suffered by him. Para 13, 14 and 15 of the report are extracted hereunder for ready reference:-

*“13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry*

*on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.*

*14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not be found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case*

*there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity.”*

*15. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.”*

8. The Appellant did state that he could not lift heavy weight with his left hand. Thus, it was established that no heavy work could be undertaken by the Appellant. Yet, it has to be borne in mind that most of the work of repairing cycle rickshaw is done with the right hand and some support is needed from the left hand. In these circumstances, the Tribunal's guess work that there could be loss of 30% earning capacity cannot be faulted.

## **CONTENTION NO.2**

9. In view of the Supreme Court judgment in *Raj Kumar v. Ajay Kumar (supra)* it is no longer *res integra* that there cannot be any deduction in the victim's income while calculating the loss of earning capacity.

10. Thus, the compensation on account of loss of earning capacity would come to ₹ 1,38,600/- (3500 x 12 x 11 x 30/100) instead of ₹ 92,400/- awarded by the Tribunal.

### **CONTENTION NO.3**

11. It is urged by the learned counsel for the Appellant that the Appellant remained admitted in LNJP hospital from 22.06.2006 to 06.07.2006. Skin grafting was conducted on his left hand and shoulder and external fixation was also applied. He made numerous visits to the hospital till the external fixator was removed on 18.09.2006. He was under regular check up from Govt. as well as private doctors. He has suffered permanent disability to the extent of 66% in relation to his left lower limb. He cannot do any heavy work. It is difficult for him to use public transport. He would have difficulty even in riding bicycle. Thus, grant of a sum of ₹ 50,000/- under the head of pain and suffering, to my mind was on the lower side. In my view, he is entitled to a compensation of ₹ 75,000/- each towards pain and suffering and loss of amenities in life.

### **CONCLUSION**

12. In view of the foregoing discussion, the Appellant is entitled to an additional compensation of ₹ 1,46,200/- (1,38,600/- – 92,400/- = 46,200/- + 1,50,000/-) along with interest @ 7.5 % per annum from the date of filing of the petition i.e. 17.08.2006 till its realization.

13. As stated earlier, the insurance company proved that the driving licence held by the driver of the offending vehicle Respondent No.1 expired on 27.03.2006. Its renewal on 23.10.2006 i.e. after a gap of seven months did not relate back to the date of expiry. On the basis of law laid down in *National Insurance Company Limited v. Kusam Rai & Ors.* 2006 (4) SCC 250; *Ishwar Chand v. Oriental Insurance Company Limited* 2007 (10) SCC 650; *Ram Babu Tiwari vs. United India Insurance Co. Ltd. & Ors.* 2009 (12) SCC 471; and *Vinod Kumar Bansal v. Ranbir Singh & Ors.*, 2011 ACJ 1672 (Delhi.) it is held that the Respondent No.1 did not possess a valid and effective driving licence on the date of the accident.
14. The Insurance Company (Respondent No.3) shall pay the compensation and shall have right to recover the same from the owner (Respondent No.2).
15. The appeal is allowed in the above terms. No costs.
16. Pending applications also stands disposed of.
17. Copy of the order may be sent to the trial court for information.

**(G.P. MITTAL)**  
**JUDGE**

**NOVEMBER 25, 2011**

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