

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

Date of decision: 18th September, 2012

+ **MAC.APP. 262/2004**

ORIENTAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Ram N. Sharma, Adv.

versus

ANUJ BAJAJ & ORS. Respondents
Through: Nemo.

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

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appeal is for reduction of compensation of ₹9,84,522/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of First Respondent for having suffered injuries in a motor vehicle accident which occurred on 26.10.1996.
2. The finding on negligence is not challenged by the Appellant Insurance Company.
3. The compensation awarded is tabulated hereunder:-

Sl.No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Compensation for having suffered 100% permanent disability and loss of future earning	₹4,05,000/-

2.	Expenses incurred on Purchase of Medicines	₹ 2,79,522/-
3.	Expenses Incurred on Conveyance and Special Diet and keeping an Attendant	₹ 25,000/-
4.	Compensation towards Pain and Sufferings & Loss of Amenities of the Life	₹ 25,000/-
5.	Compensation towards purchase of Artificial Limb	₹ 2,50,000/-
	Total	₹ 9,84,522/-

4. The only ground of challenge raised by the Appellant Insurance Company is that the First Respondent was a housewife. She suffered permanent disability to the extent of 80% on account of amputation of her left leg below knee. The Claims Tribunal erred in taking the loss of earning capacity as 100%. Although, it should have been taken as 40% in respect of the whole body. It is stated that the compensation of ₹2,50,000/- awarded towards purchase of artificial limb was not justified.
5. In *Raj Kumar v. Ajay Kumar & Anr.*, 2011 (1) SCC 343, the Supreme Court brought out the difference between permanent disability and functional disability resulting in the loss of earning capacity. It was laid down that the compensation on account of loss of earning capacity has to be granted in accordance to the nature of job undertaken by the victim of motor accident. Paras 11 and 14 of the report are extracted hereunder:

“11. What requires to be assessed by the Tribunal is the effect of the permanently 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).”

We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. 2010 (10) SCC 254 and Yadava Kumar v. D.M., National Insurance Co. Ltd. 2010 (10) SCC 341.

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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 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."

6. Admittedly, the First Respondent was a housewife. With her amputated leg, she would hardly be able to carry out day to day household activities. She may be able to carry out small work while sitting. Thus, the loss of

gratuitous services rendered by a housewife with an amputated leg would be about 80%.

7. This Court in *Royal Sundaram Alliance Insurance Co. Ltd. v. Master Manmeet Singh & Ors.* MAC. APP. 590/2011, decided on 30.01.2012. this Court dealt with the question of value of gratuitous services rendered by a housewife. In *Master Manmeet Singh* this Court noticed following judgments of the Supreme Court:-

- (i) *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.* (1994) 2 SCC 176,
- (ii) *National Insurance Company Limited v. Deepika & Ors.*, 2010 (4) ACJ 2221,
- (iii) *Amar Singh Thukral v. Sandeep Chhatwal*, ILR (2004) 2 Del 1,
- (iv) *Lata Wadhwa & Ors. v. State of Bihar & Ors.*, (2001) 8 SCC 197,
- (v) *Gobald Motor Service Ltd. & Anr. v. R.M.K. Veluswami & Ors.*, AIR 1962 SC 1,
- (vi) *A. Rajam v. M. Manikya Reddy & Anr.*, MANU/AP/0303/1988,
- (vii) *Morris v. Rigby* (1966) 110 Sol Jo 834 and
- (viii) *Regan v. Williamson* 1977 ACJ 331 (QBD England),

and laid down the principle for determination of loss of dependency on account of gratuitous services rendered by a housewife. Para 34 of the judgment in *Master Manmeet Singh (supra)* is extracted hereunder:-

“34. To sum up, the loss of dependency on account of gratuitous services rendered by a housewife shall be:-

- (i) Minimum salary of a Graduate where she is a Graduate.*
- (ii) Minimum salary of a Matriculate where she is a Matriculate.*
- (iii) Minimum salary of a non-Matriculate in other cases.*
- (iv) There will be an addition of 25% in the assumed income in (i), (ii) and (iii) where the age of the homemaker is upto 40 years; the increase will be restricted to 15% where her age is above 40 years but less than 50 years; there will not be any addition in the assumed salary where the age is more than 50 years.*
- (v) When the deceased home maker is above 55 years but less than 60 years; there will be deduction of 25%; and when the deceased home maker is above 60 years there will be deduction of 50% in the assumed income as the services rendered decrease substantially. Normally, the value of gratuitous services rendered will be NIL (unless there is evidence to the contrary) when the home maker is above 65 years.*
- (vi) If a housewife dies issueless, the contribution towards the gratuitous services is much less, as there are greater chances of the husband's re-marriage. In such cases, the loss of dependency shall be 50% of the income as per the qualification stated in (i), (ii) and (iii) above and addition and deduction thereon as per (iv) and (v) above.*

(vii) *There shall not be any deduction towards the personal and living expenses.*

(viii) *As an attempt has been made to compensate the loss of dependency, only a notional sum which may be upto ₹ 25,000/- (on present scale of the money value) towards loss of love and affection and ₹ 10,000/- towards loss of consortium, if the husband is alive, may be awarded.*

(ix) *Since a homemaker is not working and thus not earning, no amount should be awarded towards loss of estate.”*

8. There was no evidence with regard to the First Respondent's qualification. Thus, the minimum wages of a non-Matriculate have to be taken to determine the loss of gratuitous services. Following *Master Manmeet Singh*, the loss of value of gratuitous services rendered by the Claimant comes to ₹3,81,480/- (1870/- + 25% x 12 x 17 x 80%) as against an award of ₹4,05,000/- made by the Claims Tribunal under this head.
9. The compensation of ₹2,50,000/- awarded towards purchase of artificial limb was granted on the basis of the estimate proved on record by the First Respondent. The same, therefore, cannot be faulted.
10. A perusal of the impugned order reveals that no compensation was awarded towards loss of amenities and the compensation of ₹25,000/- awarded towards pain and suffering in case of an amputation is on the lower side. Thus, though the compensation awarded by the Claims Tribunal towards loss of gratuitous services is in excess of about ₹ 24,000/- but, for the reasons as stated above, it cannot be said that the

compensation awarded is excessive or exorbitant. On the other hand, the compensation awarded is just and reasonable.

11. The Appeal is devoid of any merit; the same is accordingly dismissed.
12. The statutory deposit of ₹25,000/- be refunded to the Appellant Insurance Company.
13. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

SEPTEMBER 18, 2012

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