

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

Reserved on: 13th August, 2012
Pronounced on: 9th October, 2012

+ **MAC APP.431/2004**

NEW INDIA ASSURANCE CO. LTD. Appellant
Through: Mr. L.K. Tyagi, Advocate

Versus

TAPAN DEEP SINGH & ORS Respondents
Through: Mr. Navneet Goyal, Advocate for the
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 Appeal is for reduction of compensation of ₹11,43,000/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the First Respondent for having suffered injuries in a motor vehicle accident which occurred on 09.07.1996.
2. As per the averments made in the Claim Petition, on 09.07.1996 at about 4:30 pm the First Respondent was waiting at traffic point on his two wheeler scooter No.DL-1SE-8351. A *nissan* truck No.DEG-6798 came from behind and hit the two wheeler. As a result of the forceful impact, the First Respondent fell down and the left rear wheel of the truck passed over his right leg below knee. The First Respondent thus suffered crush injury on his right leg apart from injuries on other parts of the body. He

was removed to Hindu Rao Hospital where he remained admitted from 16.07.1996 to 08.08.1996. Amputation of the leg below knee was carried out. There was, however, difficulty in healing of the wound. Due to lack of proper arrangement for skin grafting, the First Respondent got himself discharged from Hindu Rao Hospital on 08.08.1996 and was admitted in Tirath Ram Hospital. He was operated upon on 10.08.1996 and skin grafting was done by taking skin from the left thigh and leg. He was discharged from Tirath Ram Hospital on 16.08.1996. The First Respondent had to try a number of artificial limbs. In his affidavit Ex.PW7/A, the First Respondent deposed that he found an artificial limb suitable for him at Jaipur. He had to make several visits to Jaipur to get the proper artificial limb. He stated that cost of an artificial limb subsequently increased to ₹3,500/- approximately. The First Respondent made out a case that he had to use imported Silipos Silo Sheath Sleeves which were not easily available in India. He stated that once imported Silipos Silo Sheath Sleeves measuring 16 inch x 16 inch had to be purchased at a cost of ₹7,000/- to 8,000/-. He got the same from Mumbai at the cost of ₹1,600/-.

3. He deposed that he spent ₹3,50,000/- on his treatment, ₹16,000/- on conveyance and ₹60,000/- on special diet. He used to work as a sales officer with M/s. Homelite Watches since the year 1992. He joined at a salary of ₹1,500/- per month which was increased to ₹3,700/- per month at the time of the accident. He had to leave the job because of the disability on account of amputation. His job as a salesman was of marketing in the field which he was unable to perform.
4. The finding on negligence is not challenged by the Appellant Insurance Company.

5. During pendency of the Appeal, an Application for additional evidence preferred by the First Respondent was allowed by an order of this Court dated 16.03.2010. The First Respondent filed his affidavit mark “A” and entered the witness box as RW1. By way of additional evidence, the First Respondent tried to make out a case that after the decision of the Claim Petition, he was using an artificial limb which was in two parts and costed ₹80,000/-. He proved his Income Tax Return for A.Y. 2002-03 to A.Y. 2008-09. After the accident, the First Respondent’s annual income gradually increased to ₹1,53,435/- in the A.Y. 2008-09. (This accident took place in the year 1996).
6. The Claims Tribunal awarded compensation under various heads, which is tabulated hereunder:

Sl.No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	<u>Pecuniary Damages:-</u> Medical Expenses ₹95,278/- Conveyance Expenses ₹4,088/- Special Diet ₹5,000/- Future Expenditure on Artificial Limbs ₹1,83,600/-	₹2,87,966/-
2.	Loss of Enjoyment in Life and Marriage Prospects	₹ 1,00,000/-
3.	Total Loss of Income	₹ 7,54,800/-
	Total Rounded Off	₹ 11,42,766/- (₹11,43,000/-)

7. The following contentions are raised on behalf of the Appellant Insurance Company:

- (i) A perusal of the Income Tax Return placed on record for the subsequent years would show that the First Respondent did not suffer any loss of earning capacity, rather his income increased from ₹40,000/- per annum in the year 1996 to ₹1,53,435/- in the A.Y. 2008-09(Ex.RW1/7). Thus, the Claims Tribunal erred in granting a sum of ₹7,00,000/- towards loss of future earning capacity.
- (ii) The cost of 15 artificial limbs @ of ₹2,500/- to ₹3,500/- would come to about ₹50,000/-. The Claims Tribunal erred in awarding a compensation of ₹1,80,000/-.
- (iii) Award of compensation of ₹1,00,000/- towards loss of amenities is excessive; only a nominal compensation is awarded under this head when a compensation towards loss of earning capacity is granted to the extent of 50% or more of the victim's income. Reliance is placed on *Raj Kumar v. Ajay Kumar & Anr., 2011 (1) SCC 343*.
- (iv) Grant of interest @ 9% per annum was excessive.
- (v) The driver of the offending truck possessed a driving licence for LMV (taxi). The driver, that is, the Respondent No.2 herein was not authorized to drive a truck. The Appellant summoned A.K. Mishra from transport authority to prove that the driver did not possess a valid driving licence, but he could not be examined because of the strike call given by the Delhi Bar Association on that day. The Appellant was, therefore, unable to prove breach of the terms of the policy. It is contended that a perusal of the driving licence available on record shows that the driving licence was not valid for driving a truck. Thus, the Appellant was not liable to pay the compensation.

LOSS OF FUTURE EARNING CAPACITY:

8. It is established on record that the First Respondent was earning ₹3,700/- per month at the time of the accident. The Appellant examined PW5 Jasvinder Singh, his employer to prove his (the First Respondent) salary. PW5 deposed that the salary was being paid to the First Respondent by an account payee cheque. I do not find any reason to disbelieve PW5's testimony that he was working as a sales officer in Homelite Watches.
9. PW5 deposed that the First Respondent was a hard working, honest and mature employee. He deposed that after the injuries, the First Respondent could never attend to his duties as he was not able to carry out the same for the reason that as a sales officer he had to visit different shops spread over in different markets.
10. In *Raj Kumar*, the Supreme Court brought out the difference between permanent disability and functional disability resulting in loss of earning capacity. The Supreme Court laid down that a payment must be made by the Claims Tribunal to ascertain the impact of the disability on the victims earning capacity. Para 13 of the report is extracted hereunder:

“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 ability (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.”

11. In the instant case, the First Respondent was unable to carry on with the job because of the disability suffered by him. He started running a PCO and expanded his business by selling recharge coupons and various products and services relating to mobile phones. His income gradually increased to ₹1,53,435/- in the A.Y. 2008-09 which is more than what he was earning in his job as a sales officer at the time of the accident in the year 1996. That, however, would not mean that the Appellant did not suffer any loss of earning capacity. We do not know, his income might have increased manifold while working as a sales officer in Homelite Watches. Anyway, there are so many imponderables and, therefore, it is difficult to say as to what was in store for the First Respondent. The fact, however, remains that he got an alternative employment and in due course started earning handsomely. In the circumstances of the case, I would take the loss of earning capacity on account of amputation of leg below knee to be 35%. Taking the actual income at the time of the accident and adding 50% towards future prospects (as he joined on a salary of ₹1,500/- in 1992 which increased to ₹3,700/- in four years), the loss of future earning capacity on a multiplier of 17 would come to ₹5,66,100/- (₹3,700/- + 50% x 12 x 17 x 50%) instead of ₹7,54,800/- awarded by the Claims Tribunal.

COST OF ARTIFICIAL LIMB:

12. In his affidavit Ex.PW7/A, the First Respondent deposed that he obtained a suitable artificial limb from Jaipur which initially cost him ₹1,500/-

and whose cost increased subsequently to ₹3,500/- per piece. He deposed that one limb would last for about a year. No expert evidence was produced by the First Respondent in this case regarding the life of one artificial limb. By way of additional evidence produced in this Appeal, the First Respondent tried to make out a case that he was advised to use another artificial limb made by M/s. Otto Bock Health Care India Pvt. Ltd. which costs ₹80,000/-. The First Respondent did not produce Dr. Atul Vaish, Sr. Divisional Medical Officer on whose advice he allegedly want to go for an artificial limb produced by M/s. Otto Bock. The certificate Mark H-49 purported to have been issued by Dr. Atul Vaish does not specifically recommend the artificial limb manufactured by M/s. Otto Bock. In the circumstances, it appears that the First Respondent has produced these documents just to resist the Appeal filed by the Appellant Insurance Company. The cost of 15 such artificial limbs would come to about ₹50,000/-. Although, as stated above, no expert evidence has been produced that an artificial limb needs to be changed every year. Thus, I would award a compensation of ₹50,000/- towards purchase of 15 artificial limbs and a compensation of ₹1,33,600/- towards purchase of Silo Sheath Sleeves. Thus, the award of compensation of ₹1,83,600/- under this head is maintained.

PAIN AND SUFFERING:

13. The Claims Tribunal awarded a compensation of ₹1,00,000/- towards loss of amenities in life. In *Govind Yadav v. New India Insurance Co. Ltd. (2011) 10 SCC 683*, the accident took place in the year 2004 and in case of amputation of one lower limb, a compensation of ₹1,50,000/- each was awarded towards pain and suffering and loss of amenities in life and loss of marriage prospects. Keeping in view the nature of injuries and the fact

that this accident took place in the year 1996, I award a compensation of ₹50,000/- towards disfigurement and loss of marriage prospects.

14. In the instant case, the First Respondent has not been awarded any compensation towards pain and suffering. It is difficult to measure the pain and suffering in terms of money which has been suffered by the claimant on account of serious injuries caused to him in a motor accident. Since the compensation is required to be paid for pain and suffering an attempt must be made to award compensation which may have some objective relation with the pain and suffering underwent by the victim of a motor accident. For this purpose, the Claims Tribunal and the Courts normally consider the nature of injury; the parts of the body where the injuries were sustained; surgeries (if any) underwent by the victim; confinement in the hospital and the duration of the treatment.
15. Keeping in view the fact that the Appellant underwent successive surgeries, the period of hospitalization in Hindu Rao Hospital and Tirath Ram Hospital and the time taken to recover from the injuries and the fact that the accident took place in the year 1996, I would make a provision of ₹50,000/- towards pain and suffering.

LOSS OF INCOME:

16. The First Respondent remained admitted in Hindu Rao Hospital for 23 days and in Tirath Ram Hospital for 08 days. On account of amputation of his right leg, he must have taken at least six months to fully recover from the injuries. He is, therefore, entitled to the loss of income for a period of six months which comes to ₹22,200/- (₹3700/- x 6). I award this sum towards loss of income.

FUTURE TREATMENT/PHYSIOTHERAPY:

17. No evidence was led by the First Respondent that any future treatment would be needed. Considering the nature of injuries and the disability suffered by him, he would need some future treatment/physiotherapy. I award him lumpsum compensation of ₹10,000/- towards physiotherapy and future treatment.

ATTENDANT CHARGES:

18. No evidence was produced by the First Respondent that he employed any attendant to look after him. Considering that there was amputation of his right leg below knee and the First Respondent remained admitted for a month, the First Respondent must have engaged some attendant or some family member must have looked after him during the period of hospitalisation and confinement at home. He had also made several visits to Jaipur to buy the artificial limb during these trips one more person had accompanied him which is evident from the bus and train tickets placed on record. In *Delhi Transport Corporation and Anr. v. Kumari Lalita* 22 (1982) DLT 170 (DB), it was held as under:-

“(33) Counsel for the Corporation argued that since Lalita is being looked after by her mother compensation ought to be reduced. We do not agree. In the case of Lalita the main question is of future care. Today she is being helped by her mother. But that does not mean that she is not to be compensated for services rendered to her. A legal agreement between mother and daughter is not necessary to claim compensation. We cannot deduct what is described as the 'domestic element' from the cost of care. A wrong doer cannot take advantage of this 'domestic element.' If the mother renders service to her, instead of a nurse, it is right and just that she should recover compensation for the value of the services that the mother has rendered to her. Mother's services were necessitated by the wrong doing and the injured should be compensated for it. (Cunnigham v. Harrison (1973) 3 All E.R.

463). The services of a wife and mother are worth more than those of a house-keeper because she is in constant attendance and does many more things than a house-keeper. (Regan v. Williamson (1976) 2 All E. R. 241)”.

19. I accordingly, award lumpsum compensation of ₹25,000/- towards Attendant Charges.
20. The Claims Tribunal awarded a compensation of ₹5,000/- towards special diet. Keeping in view the nature of injuries and the duration of treatment, the same is raised to ₹10,000/-.
21. The Claims Tribunal awarded interest @ 9% per annum. In the year 1996, the rate of interest were very high. The interest rate started falling at the beginning of this century.
22. In *Abati Bezbaruah v. Dy. Director General, Geological Survey of India*, (2003) 3 SCC 148, the Supreme Court culled out the factors to be taken into consideration while awarding interest in a motor accident case. Paras 6 and 18 of the report are extracted hereunder:-

“6. The question as to what should be the rate of interest, in the opinion of this Court, would depend upon the facts and circumstances of each case. Award of interest would normally depend upon the bank rate prevailing at the relevant time.

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18. Three decisions were cited before us by Mr. A.P. Mohanty, learned counsel appearing on behalf of the appellant, in support of his contentions. No ratio has been laid down in any of the decisions in regard to the rate of interest and the rate of interest was awarded on the amount of compensation as a matter of judicial discretion. The rate of interest must be just and reasonable depending upon the facts and circumstances of each case and taking all relevant factors including inflation, change of economy, policy being adopted by Reserve Bank of India from time to time,

how long the case is pending, permanent injuries suffered by the victim, enormity of suffering, loss of future income, loss of enjoyment of life etc., into consideration. No rate of interest is fixed under Section 171 of the Motor Vehicles Act, 1988. Varying rates of interest are being awarded by Tribunals, High Courts and the Supreme Court. Interest can be granted even if a claimant does not specifically plead for the same as it is consequential in the eye of law. Interest is compensation for forbearance or detention of money and that interest being awarded to a party only for being kept out of the money which ought to have been paid to him. No principle could be deducted nor can any rate of interest be fixed to have a general application in motor accident claim cases having regard to the nature of provision under Section 171 giving discretion to the Tribunal in such matter. In other matters, awarding of interest depends upon the statutory provisions, mercantile usage and doctrine of equity. Neither Section 34 CPC nor Section 4-A(3) of the Workmen's Compensation Act are applicable in the matter of fixing rate of interest in a claim under the Motor Vehicles Act. The courts have awarded the interest at different rates depending upon the facts and circumstances of each case. Therefore, in my opinion, there cannot be any hard-and-fast rule in awarding interest and the award of interest is solely on the discretion of the Tribunal or the High Court as indicated above."

23. In *Rubi (Chandra) Dutta v. United India Insurance Co. Ltd.* (2011) 11 SCC 269, the interest granted by the National Commission @ 9% was upheld by the Supreme Court. In *Sant Singh v. Sukhdev Singh*, (2011) 11 SCC 632, interest @ 9% per annum was awarded by the Hon'ble Supreme Court. In *Raj Kumar v. Ajay Kumar & Anr.*, 2011 (1) SCC 343, the interest @ 9% awarded by the Claims Tribunal was approved. In *Arvind Kumar Mishra v. New India Assurance Co. Ltd.*, (2010) 10 SCC 254, interest @ 9% was awarded on the enhanced amount of compensation.

24. In the circumstances, the rate of interest @ 9% per annum cannot be said to be exorbitant and excessive.

25. The compensation awarded is recomputed as under:-

Sl.No.	Compensation under various heads	Awarded by this Court
1.	<u>Pecuniary Damages:</u> Medical Expenses ₹95,278/- Conveyance Expenses (including visit to Jaipur) ₹4,250/- Special Diet ₹10,000/- Future Expenditure on Artificial Limbs ₹1,83,600/-	₹2,93,128/-
2.	Future Treatment & Physiotherapy	₹10,000/-
3.	Loss of Income(₹3700/- x 6)	₹22,200/-
4.	Loss of Future Earning Capacity (Total Loss of Income)	₹5,66,100/-
5.	Pain & Suffering	₹50,000/-
6.	Loss of Enjoyment, Disfigurement and Loss of Marriage Prospects	₹50,000/-
7.	Attendant Charges	₹25,000/-
	Total	₹ 10,16,428/-

LIABILITY:

26. Now turning to the Appellant's plea that the owner committed breach of the terms of the policy by allowing the vehicle to be driven by the Second Respondent who was not holding a valid and proper licence to drive the truck, I may say that as per Section 149(2) of the Motor Vehicles Act, 1988(the Act), an insurer is entitled to defend the action on the ground as

mentioned under Section 149(2)(a)(i)(ii) of the Act. The onus is on the insurer to prove that there is a conscious and willful breach of the terms of the policy. (*United India Insurance Company Ltd. v. Lehru & Ors.*, (2003) 3 SCC 338 and *National Insurance Company Limited v. Swaran Singh & Ors.*, (2004) 3 SCC 297). The Appellant's plea is that it was not given an opportunity to prove the willful breach committed by the owner, that is, Respondent No.3 herein. A perusal of the Claims Tribunal record reveals that a criminal case FIR No.418/96 P.S. Shalimar Bagh was registered against the driver Dalip Kumar. He was challaned for the offences punishable under Section 279 and 338 IPC. He was not prosecuted for an offence under Section 3 read with Section 181 of the Act for driving the truck without a valid driving licence.

27. No specific plea was taken by the Appellant in the written statement that the driver did not possess the licence of the class of vehicle which he was driving at the time of the accident. The Second Respondent's driving licence bearing No.096040147 was seized by the IO in the criminal case. The licence shows that it is valid for a light motor vehicle LMV(goods only) and taxi. No notice was issued to the driver and the owner to produce any other licence or if the driver had obtained any endorsement on this licence which was issued on 22.04.1995 and was valid upto 21.04.1999. As per this licence, the driver could drive any light motor vehicle (goods vehicle). As per Section 2(21) of the Act, any transport vehicle whose gross weight does not exceed 7500 kg would fall within the definition of light motor vehicle. The accident took place with a *nissan* truck No.DEG-6798. No evidence was produced by the Appellant that the gross weight on this vehicle was more than 7500 kg and thus it did not fall in the category of light motor vehicle. Thus, the Appellant

failed to prove that there was any breach of the terms of the policy, leave aside the willful or conscious breach of the terms of the policy.

28. In view of the discussion above, the compensation stands reduced from ₹11,43,000/- to ₹ 10,16,428/- which shall carry interest as awarded by the Claims Tribunal..
29. The excess compensation of ₹1,26,572/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.
30. Rest of the amount shall be released to the First Respondent in terms of order passed by the Claims Tribunal.
31. The Appeal is allowed in above terms.
32. Statutory amount of ₹25,000/- shall be refunded to the Appellant Insurance Company.
33. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 09, 2012
pst/vk