

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

Date of decision: 23rd November, 2012

+ **MAC.APP. 225/2010**

ORIENTAL INSURANCE COMPANY LTD Appellant
Through: Mr. D.K. Sharma, Adv.

versus

ARUN KUMAR & ORS. Respondents
Through: Mr. Munish Kumar Sharma, Adv. for
R-1.

+ **MAC.APP. 1216/2012**

ARUN KUMAR Appellant
Through: Mr. Munish Kumar Sharma, Adv.

versus

ORIENTAL INSURANCE COMPANY LTD & ORS..... Respondents
Through: Mr. D.K. Sharma, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. This Appeal (MAC APP.225/2010) is for reduction of compensation of ₹6,70,792/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the First Respondent who suffered injuries in a motor vehicle accident which occurred on 18.12.2005.

2. The finding on negligence reached by the Claims Tribunal is not challenged by the Appellant Insurance Company. Thus, the same has attained finality.
3. On account of the accident the First respondent suffered grievous injuries on his right leg. He remained admitted in the hospital from 19.12.2005 to 20.01.2006. In spite of the best efforts, the First Respondent's right leg could not be saved and had to be amputated above knee.
4. During inquiry before the Claims Tribunal it was claimed that the deceased was working as a Fitter with M/s. Lakshmi Engineering Works, G.T. Road, Shahdara, Delhi-95. No documentary or oral evidence was produced from the employer with regard to the First Respondent's employment with M/s. Lakshmi Engineering Works or his salary @ ₹6,000/- per month. The Claims Tribunal, therefore, took the minimum wages of a Non Matriculate and computed the loss of future income on 85% loss of earning capacity. The compensation awarded is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Reimbursement on Medical Expenses	₹15,000/-
2.	Loss of Earning	₹ 33058.90/-
3.	Disability	₹ 5,82,433.26/-
4.	Pain and Suffering	₹ 35,000/-
5.	Loss of Amenities of Life	₹ 35,000/-
	Total	₹ 6,70,792.16/-

5. The following contentions are raised on behalf of the Appellant Insurance Company:-
- (i) First Respondent (the injured) himself contributed to the accident as there was overloading of the TSR.
 - (ii) No expert evidence was produced to assess and determine the functional disability and loss of earning capacity.
 - (iii) Award of compensation on 85% loss of earning capacity was excessive and exorbitant.
6. The First Respondent filed Cross Objections which were registered as MAC APP.1216/2012. The First Respondent took the plea that the compensation awarded towards non pecuniary damages as also towards special diet and conveyance and loss of income was on the lower side.
7. For the sake of convenience, the Appellant shall be referred to as the Insurance Company and the First Respondent as the Claimant.
8. Section 168 of the Motor Vehicles Act, 1988 (the Act) enjoins a Claims Tribunal to determine the amount of compensation which is just and reasonable.
9. In *General Manager, Kerala Road Transport Corporation, Trivandrum v. Susamma Thomas & Ors.*, (1994) 2 SCC 176, the Supreme Court held as under: -

“5.....The determination of the quantum must answer what contemporary society "would deem to be a fair sum such as would allow the wrongdoer to hold up his head among his neighbours and say with their approval that he has done the fair thing". The amount awarded must not be niggardly since the law values life

and limb in a free society in generous scales'. All this means that the sum awarded must be fair and reasonable by accepted legal standards.”

10. Of late, the trend of the Superior Courts is to award full and fair compensation. In the case of *Raj Kumar v. Ajay Kumar & Anr., 2011 (1) SCC 343*, the Supreme Court observed that the object of awarding damages is to make good the loss suffered as a result of the wrong done as far as money can do in a fair, reasonable and equitable manner. Paras 5 and 6 of the report are extracted hereunder:-

*“5. The provision of the Motor Vehicles Act, 1988 ('the 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 inability 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 SC 376, *R.D. Hattangadi v. Pest Control (India) (P) Ltd.*, 1995 (1) SCC 551 and *Baker v. Willoughby*, 1970 AC 467.*

LOSS OF FUTURE EARNING CAPACITY

11. It is admitted case of the parties that on account of amputation of right leg above knee, the Claimant suffered 85% permanent disability in respect of his right lower limb. The Claims Tribunal took this disability in respect of right lower limb as 85% loss of earning capacity. A perusal of the

Trial Court reveals that no expert evidence was produced by the Claimant to prove the loss of earning capacity. The First Respondent (the Claimant) came up with the case that he was working as a Fitter with M/s. Lakshmi Engineering Works. As stated above, he (the Claimant) did not produce any corroborative evidence with regard to his employment. This accident took place in the year 2005. Even if, the Claimant was working as a Fitter or was carrying any other menial job, the loss of one limb would definitely affect the earning capacity.

12. In the absence of any specific evidence in *Raj Kumar v. Ajay Kumar & Anr.*, 2011 (1) SCC 343, the Supreme Court took 45% disability in respect of left lower limb as 20% loss of future earning capacity. In the instant case, I would make a guess work and would take the loss of future earning capacity as 45% instead of 85% taken by the Claims Tribunal.
13. The Claimant would be entitled to an addition of 30% towards inflation on the basis of report of the Supreme Court in *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559. The loss of future earning capacity thus comes to ₹4,00,743/- (3358/- + 30% x 12 x 17 x 45%) as against ₹5,82,433.26 awarded by the Claims Tribunal.

LOSS OF INCOME

14. The Claimant suffered grievous injuries. As stated above, he remained admitted in GTB hospital for over a month. The Claims Tribunal awarded him one month's wages as loss of income. Considering the nature of injuries, I would make a provision of loss of income for six months i.e. ₹20,148/- (3358/- x 6).

PAIN AND SUFFERING AND LOSS OF AMENITIES IN LIFE

15. In case of *Govind Yadav v. New India Insurance Co. Ltd. (2011) 10 SCC 683*, in case of amputation of one leg a compensation of ₹1.5 lacs each was awarded towards pain and suffering and loss of amenities in life including the loss of marriage prospects. The Claims Tribunal, however, awarded a sum of ₹35,000/- each towards pain and suffering and loss of amenities in life, which seems to be on the lower side. Considering the nature of injuries, and relying on *Govind Yadav*, I would enhance the same and make a provision of ₹ ₹1,50,000/- towards pain and suffering and ₹1,50,000/-towards loss of amenities in life.

SPECIAL DIET & CONVEYANCE

16. The Claims Tribunal did not award any compensation towards special diet and conveyance. The Appellant needed special diet to recover from the injuries and needed conveyance to visit Hospital. His Attendants also required conveyance to look after him in the Hospital. Keeping in view the nature of injuries, I would award compensation of ₹10,000/- each towards special diet and conveyance.
17. The compensation awarded is re-computed as under:-

Sl. No.	Compensation under various heads	Awarded by this Court
1.	Loss of Future Earning Capacity	₹ 4,00,743/-
2.	Loss of Income for six months	₹20,148/-
3.	Pain and Suffering	₹ 1,50,000/-
4.	Loss of Amenities in Life	₹ 1,50,000/-
5.	Special Diet	₹ 10,000/-

6.	Conveyance	₹ 10,000/-
7.	Medical Expenses (as awarded by the Claims Tribunal)	₹15,000/-
	Total	₹ 7,55,891/-

18. The compensation is thus enhanced from ₹6,70,792/- to ₹7,55,891/-.
19. The enhanced compensation of ₹85,099/- shall carry interest @ 7.5% per annum from the date of filing of the petition till its deposit.
20. Appellant Oriental Insurance Company is directed to deposit the enhanced compensation along with interest with the Claims Tribunal within six weeks.
21. Seventy five percent of the enhanced compensation shall be held in fixed deposit for a period of five years and rest shall be released on deposit. The Claimant would be entitled to quarterly interest on the amount held in the fixed deposit.
22. The compensation awarded by the Claims Tribunal shall be released in terms of the impugned judgment.
23. Both the Appeals are allowed in above terms.
24. The statutory deposit of ₹25,000/- be refunded to the Appellant Insurance Company.
25. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

NOVEMBER 23, 2012

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