

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

Date of decision: 11th July, 2012

+ **MAC.APP. 23/2005**

ORIENTAL INSURANCE CO. LTD. Appellant

Through: Mr. Tarkeshwar Nath with
Mr. Saurabh Kumar Tuteja,
Adv.

versus

HIRALAL & ORS. Respondent

Through: Mr. Roshan Saini, 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. The Appeal is for reduction of compensation of ₹4,92,700/- awarded in favour of the First Respondent for having suffered injuries in a motor vehicle accident which occurred on 27.11.1999.
2. On the fateful day, while the First Respondent was returning to his jhuggi on his bicycle along with one Ramesh, his neighbour, a Tata truck No.HR-46-1917 being driven in a rash and negligent manner by the Second Respondent came from behind and struck against his bicycle. The First Respondent fell down. Left wheel of the truck ran over the right hand/wrist leading to heavy bleeding. The First Respondent was removed to Adarsh

Nursing Home, Sarai Peepal Thalla and was then treated in Hindu Rao Hospital. He was issued a Permanent Disability Certificate showing 40% disability because of deformity in his right hand and crushing of the fingers.

3. On appreciation of evidence, the Claims Tribunal found that the First Respondent was working as a Rickshaw Pullar and held that the Appellant would be unable to carry his profession on account of permanent disability. Thus, the Claims Tribunal took the minimum wages of a semi-skilled worker and awarded a compensation of ₹4,82,688/- on account of loss of future earnings. On adding a sum of ₹10,000/- towards non-pecuniary damages, an overall compensation of ₹4,92,700/- was awarded.
4. Following contentions are raised on behalf of the Appellant:-
 - (i) Since the First Respondent was employed as a rickshaw puller, his income should have been taken as Minimum Wages of an unskilled worker instead of a semi-skilled worker.
 - (ii) Since there was permanent disability to the extent of 40% only on account of the injuries on the right hand, the Claims Tribunal erred in taking this to be a case of 100% disability.
5. On the other hand, it is urged by the learned counsel for the First Respondent that on account of the crush injuries on the

right hand and wrist, the First Respondent was totally incapacitated to carry out the work and thus there is no error or infirmity in taking the loss of earning capacity as 100%.

6. As far as the income of the First Respondent is concerned, the Claims Tribunal was justified in taking the Minimum Wages of a semi-skilled worker. While pulling a rickshaw one needs some skill. Otherwise also, it can be assumed that in the year 1999 a rickshaw puller would be earning at least ₹90/- per day and thus awarding compensation on the basis of Minimum Wages @ ₹2514/- per month cannot be said to be unreasonable.
7. 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 into loss of earning capacity. It was held that the same injury may have different impact on persons as per their vocation. Paras 10, 13 and 14 of the report are extracted hereunder:-

“10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all

cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

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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.

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 find 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."

8. Thus in *Raj Kumar (supra)* the Supreme Court held that in case of amputation of even the left hand of a victim who is a carpenter, there may be functional disability to the extent of 100%. So would be the case of a rickshaw puller who lost all his fingers in the accident. I have no manner of doubt that the First Respondent could not carry his profession of a rickshaw puller because of the disability suffered by him. Although, it was just 40% in respect of his right hand.
9. The question that falls for consideration is whether he could choose an alternative vocation. Obviously, a person with such an injury may be able to carry out the job of Chowkidar (being an unskilled person) but whether such an alternative employment is easy to come. Perhaps, the alternative

employment would not be easily available and that too to a person with such disability. Even if, there is a small possibility of alternative employment and the compensation has to be reduced, the First Respondent has not been granted any compensation towards the medical treatment, special diet, conveyance and loss of amenities in life.

10. No Cross Appeal or Cross-Objections have been filed by the First Respondent (the Claimant). In the peculiar circumstances of the case, the compensation of ₹4,92,700/- awarded is just and reasonable and does not call for any interference.
11. The Appeal is devoid of any merit. The same is accordingly dismissed.
12. The statutory deposit of ₹25,000/- shall be refunded to the Appellant Insurance Company.
13. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

JULY 11, 2012

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