

IN THE HIGH COURT OF DELHI AT NEW DELHI**+ MAC.APP.No.303/2008**

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Reserved on : 11th May, 2012
Date of decision : 31st May, 2012THE ORIENTAL INSURANCE CO. LTD. Appellant
Through : Mr. S.D. Wadhwa, Adv.

versus

RANDHIR SINGH & ORS. Respondents
Through : Mr. Santosh Kumar Chaurihaa,
Adv. along with R-1.**CORAM :-**
THE HON'BLE MR. JUSTICE J.R. MIDHA**JUDGMENT**

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of ₹14,90,360/- has been awarded to respondent No.1. The appellant seeks reduction of the award amount. Respondent No.1 has filed cross-objections seeking enhancement of the award amount.

2. The accident dated 19th March, 2005 resulted in grievous injuries to respondent No.1. Respondent No.1's right ankle and foot were crushed due to which he suffered compound fracture in the right leg and fracture of left clavicle. Respondent No.1 was initially admitted in Dr. Baba Saheb Ambedkar Hospital, and thereafter, shifted to Shri Balaji Hospital where he remained from 20th March, 2005 to 27th April, 2005.

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Respondent No.1 was admitted for a day in Bhagwan Mahavir Hospital and Heart Institute on 19th May, 2005. Respondent no.1 remained hospitalized in Shri Balaji Hospital from 8th June, 2005 to 17th June, 2005. He was again admitted in Bhagwan Mahavir Hospital and Heart Institute from 4th October, 2005 to 9th October, 2005 and from 30th December, 2005 to 31st December, 2005. A steel rod was inserted in his right leg and a plate was inserted in the right ankle. Respondent no.1 is still continuing his treatment in Bhagwan Mahavir Hospital and Heart Institute as an OPD patient. Respondent No.1 has suffered 30% permanent disability relating to right lower limb.

3. The Claims Tribunal awarded ₹35,000/- towards pain and suffering, ₹25,000/- towards loss of enjoyment and amenities, ₹3,60,000/- towards reimbursement of medical expenses, ₹10,000/- towards special diet, ₹10,000/- towards conveyance, ₹1,47,000/- towards loss of income and ₹9,03,360/- towards loss of future income. The total compensation awarded is ₹14,90,360/-.

4. The learned counsel for the appellant urged at the time of hearing of this appeal that the respondent has not suffered any loss of income and, therefore, is not entitled to loss of past as well as future income. It is further submitted that respondent No.1 remained on leave for nine months without

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pay, out of which he adjusted 120 days' leave against earned leave and, therefore, he is not entitled to compensation for loss of past income. It is submitted that the respondent No.1 was working as a teacher in Kendriya Vidyalaya at the time of the accident and is still continuing in the said post and therefore, there is no loss of future income.

5. The learned counsel for respondent No.1 has urged the following grounds for seeking enhancement of compensation:-

- (i) The compensation for pain and suffering be enhanced.
- (ii) The compensation for loss of enjoyment and loss of amenities be enhanced.
- (iii) The compensation be awarded for disfiguration.
- (iv) The compensation for special diet and conveyance be enhanced.
- (v) The rate of interest be enhanced from 7.5% per annum to 12% per annum.

6. With respect to the compensation for loss of income for nine months, it is noted that respondent No.1 remained on leave for nine months without pay. The respondent had adjusted his earned leave of 120 days and has, therefore, suffered loss on that account. The Claims Tribunal has, therefore, rightly awarded ₹1,47,000/- towards loss of past income to respondent No.1.

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7. Respondent No.1 was working as a teacher with Kendriya Vidyalaya. Respondent No.1 is present in Court and he submits that he is still continuing in service in Kendriya Vidyalaya. There is no deduction of salary on account of the injuries suffered by respondent No.1 in the accident. There is no loss of promotion on account of 30% disability suffered by respondent No.1. Since respondent No.1 has not suffered any loss of income, he is not entitled to compensation for loss of future income. This case is squarely covered by the judgment of the Supreme Court in **Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343.**

8. The Claims Tribunal has awarded ₹35,000/- towards pain and suffering and ₹25,000/- towards loss of amenities of life, which are on the lower side. The Claims Tribunal has not awarded any compensation towards disfiguration. In **Oriental Insurance Company Ltd. v. V.S. Vijay Kumar Mittal, 2008 ACJ 1300**, this Court discussed the principles relating to the award of non-pecuniary compensation towards pain and suffering, loss of amenities of life and disfiguration. This Court examined all the previous judgments with respect to the non-pecuniary compensation awarded in the case of permanent disability and held that the Courts have awarded about ₹3,00,000/- under the heads of non-pecuniary damages for

permanent disability of 50% and above. The findings of this

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Court are as under:-

"10. The possession of one's own body is the first and most valuable of all human rights and while awarding compensation for bodily injuries this primary element is to be kept in mind. Bodily injury is to be treated as a deprivation which entitles a claimant to damages. The amount of damages varies on account of gravity of bodily injury. Though it is impossible to equate money with human suffering, agony and personal deprivation, the Court and Tribunal should make an honest and serious attempt to award damages so far as money can compensate the loss. Regard must be given to the gravity and degree of deprivation as well as the degree of awareness of the deprivation. Damages awarded in personal injury cases must be substantial and not token damages.

11. The general principle which should govern the assessment of damages in personal injury cases is that the Court should award to injured person such a sum as will put him in the same position as he would have been in if he had not sustained the injuries.

12. Broadly speaking, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and non pecuniary damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money. Whereas, non pecuniary damages are those which are incapable of being assessed by arithmetical calculations.

13. Pecuniary loss may include the following:

- (i) Special damages or pre-trial pecuniary loss.
- (ii) Prospective loss of earnings and profits.
- (iii) Medicinal expenses.
- (iv) Cost of future care and other expenses.

14. Non pecuniary loss may include the following:

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- (i) Pain and suffering.
- (ii) Damages for mental and physical shock.
- (iii) Loss of amenities of life which may include a variety of matters i.e. on account of injury the injured may not be able to walk, run or sit etc.
- (iv) Loss of expectation of life i.e. on account of injury normal longevity of the life of the person concerned is shortened.
- (v) Disfigurement.
- (vi) Discomfort or inconvenience, hardship, disappointment, frustration and mental stress in life.

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18. In order to properly appreciate the contentions advanced by the learned counsel for the appellant, I note the following judgments:-

(i) B.N.Kumar vs. D.T.C., 118 (2005) DLT 36.

In said case, injured sustained crush injuries on his right leg leading to its amputation above knee in a road accident on 5th November 1987. He suffered a permanent disability of 85%. Noting various judgments wherein Courts had awarded ₹3,00,000/- under the head non-pecuniary damages, a Single Judge of this Court awarded ₹75,000/- for 'pain and suffering' and ₹2,00,000/- for 'continuing disability suffered by him'. Thus, a total of ₹2,75,000/- was awarded under this head.

(ii) Fakkirappa vs. Yallawwa & Anr., 2004 ACJ 141

In said case, a minor male child sustained grievous injury in a road accident which occurred on 8.5.2000 resulting in amputation of his left leg below knee. Considering the gravity of injury suffered the injured, Division Bench of Karnataka High Court awarded following compensation under the head 'non-pecuniary damages':-

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(i)	Pain and suffering	: ₹50,000/-
(ii)	Loss of amenities of life	: ₹1,00,000/-
(iii)	Loss of marriage prospects	: ₹50,000/-
(iv)	Damages for amputation of leg before knee	: ₹1,50,000/-
(v)	Loss of expectation of life	: ₹50,000/-

Total : ₹4,00,000/-

(iii) K. Shankar v. Pallavan Transport Corporation, 2001 ACJ 488

In said case, injured sustained serious injuries on his right leg in an accident on 14.2.1989. His right leg was amputated and he suffered permanent disability of 80%. A learned Single Judge of Madras High Court awarded the following compensation under the head 'non-pecuniary damages'.

(i)	For permanent disability	: ₹80,000/-
(ii)	Pain and suffering	: ₹50,000/-
(iii)	Loss of expectation of life and proper marital alliance	: ₹50,000/-
(iv)	For mental agony	: ₹1,00,000/-

Total : ₹2,80,000/-

(iv) M. Jaganathan v. Pallavan Transport Corporation, 1999 ACJ 366

In said case, injured aged 45 years sustained injuries in an accident on 21.6.1990. The injury sustained by the injured resulted in the amputation of his left leg above the knee. Division Bench of Madras High Court awarded following compensation under the head 'non pecuniary damages':-

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|-------|---|---------------|
| (i) | Pain and suffering | : ₹1,00,000/- |
| (ii) | Compensation for continuing permanent disability | : ₹2,00,000/- |
| (iii) | Mental agony, torture and Humiliation because of Amputation | : ₹75,000/- |

Total : ₹3,75,000/-

(v) Bhagwan Singh Meena v. Jai Kishan Tiwari, 1999 ACJ 1200

In said case, the injured sustained severe and serious injuries on account of the road accident. His right leg was amputated. A learned Single Judge of Rajasthan High Court awarded a compensation of ₹3,00,000/- under the head non-pecuniary damages.

(vi) Dr. Gop Ramchandani v. Onkar Singh & Ors., 1993 ACJ 577

In said case, in an accident which had occurred on 17.12.1985, injured sustained injuries because of which his left leg was amputated resulting in 50% permanent disability. A Single Judge of Rajasthan High Court awarded a compensation of ₹3,00,000/- under the head 'non pecuniary damages'.

Break-up of the compensation under the said head is as under:-

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| (i) | Physical and mental agony | : ₹1,00,000/- |
| (ii) | Permanent disability | : ₹1,00,000/- |
| (iii) | Loss of social life and loss in profession | : ₹1,00,000/- |

Total : ₹3,00,000/-

(vii) Jitendra Singh v. Islam, 1998 ACJ 1301

In said case, in an accident which had occurred on 14.02.1992, injured sustained injuries because of which his left leg was amputated resulting in 55%

permanent disability. A Single Judge of Rajasthan High Court awarded a compensation of ₹3,00,000/- under the head 'non pecuniary damages'.

(viii) Iranna v. Mohammadali Khadarsab Mulla & Anr. 2004 ACJ 1396

In said case, on 19.4.2000, injured aged 7 years met with an accident. Due to the said accident, he sustained grievous injuries resulting in amputation of his left leg below knee. Tribunal awarded following compensation to him under the head 'non pecuniary damages':-

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|-------|--|---------------|
| (i) | Pain and suffering | : ₹50,000/- |
| (ii) | Loss of amenities, happiness, frustration | : ₹1,00,000/- |
| (iii) | Loss of marriage prospects | : ₹50,000/- |
| (iv) | Amputation of leg below knee and knee dis-articulation | : ₹1,50,000/- |

Total : ₹3,50,000/-

From the afore noted judicial decisions, a trend which emerges is that between the years 1985 to 1990, Courts have been awarding about ₹3,00,000/- under the head 'non pecuniary damages' for amputation of leg resulting in permanent disability of 50% and above."

9. Taking the permanent disability of 30% suffered by the claimant/respondent No.1 relating to the right lower limb, the continuous treatment for about nine months and repeated hospitalization, the compensation for pain and suffering is enhanced from ₹35,000/- to ₹75,000/- and compensation for loss of amenities is enhanced from ₹25,000/- to ₹75,000/-. ₹75,000/- is awarded towards disfiguration. The Claims Tribunal has awarded ₹10,000/- towards special diet and

₹10,000/- towards conveyance. The compensation towards special diet does not warrant any enhancement. However, the compensation of ₹10,000/- awarded towards conveyance is grossly inappropriate considering that the respondent No.1 has suffered permanent disability relating to the right lower limb, due to which he cannot use public transport and will have to incur approximately ₹2,500/- per month on conveyance for the rest of his life. A sum of ₹3,00,000/- is awarded to the claimant/respondent No.1 towards conveyance on the basis that if the said amount is kept in fixed deposit, the interest thereon should be sufficient to meet the regular expenditure of respondent No.1 on conveyance.

10. The Claims Tribunal has awarded interest @ 7.5% per annum. However, the appropriate rate of interest is 9% per annum in terms of the judgment of the Supreme Court in the case of **Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy, AIR 2012 SC 100**. The rate of interest is, therefore, enhanced from 7.5% per annum to 9% per annum.

11. The claimant/respondent No.1 is entitled to a total compensation of ₹11,42,000/- as per the break up given hereunder:-

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|-------|--|---|-------------|
| (i) | Compensation for pain and suffering | : | ₹75,000/- |
| (ii) | Compensation for loss of amenities of life | : | ₹75,000/- |
| (iii) | Compensation for disfiguration | : | ₹75,000/- |
| (iv) | Compensation towards reimbursement of medical expenses | : | ₹3,60,000/- |
| (v) | Compensation towards special diet | : | ₹10,000/- |
| (vi) | Compensation towards conveyance | : | ₹3,00,000/- |
| (vii) | Compensation towards loss of income | : | ₹1,47,000/- |

Total : ₹11,42,000/-

12. The appeal as well as the cross-objections are partly allowed and the award amount is reduced from ₹14,90,360/- to ₹11,42,000/- along with interest at the rate of 9% from the date of the filing of the claim petition till realization.

13. The appellant has deposited the entire award amount with the Registrar General of this Court, out of which 60% of the award amount along with interest has been released to the respondent No.1. The balance award amount in terms of this judgment be released to respondent No.1 and the remaining amount be refunded back to the appellant.

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14. The statutory amount deposited by the appellant be
refunded to the appellant.

15. Copy of this judgment be sent to claimant/respondent
No.1.


J.R. MIDHA, J.

MAY 31, 2012

- Appeal allowed on 31.5.12
- Fresh Appⁿ
C.M. 19147/12. (for clarification)
(by appellant)

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

+ MAC.APP. 303/2008

THE ORIENTAL INSURANCE CO. LTD. Appellant
Through Mr. S.D. Wadhwa, Adv.
versus

RANDHIR SINGH & ORS Respondents
Through Respondent no.1 in person.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

ORDER

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10.10.2013

CM No.19197/2012

1. Vide judgment dated 31st May, 2012, the award amount was reduced from Rs.14,90,360/- to Rs.11,42,000/- along with interest at the rate of 9% per annum from the date of filing of the claim petition till realization. Learned counsel for the petitioner submits that there is a calculation error and the total of items in para 11 is Rs.10,42,000/- but the said amount has been wrongly mentioned as Rs.11,42,000/-. Learned counsel seeks the correction of the said error.

2. Respondent no.1 does not dispute the mistake in the judgment.

3. The arithmetical error in the judgment dated 31st May, 2012 is corrected. Rs.11,42,000/- in paras 11 and 12 is corrected and be read as Rs.10,42,000/-.

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4. The application stands disposed of.
 5. Respondent no.1 shall refund the amount of difference payable to Oriental Insurance Co. Ltd. by virtue of this order. Respondent no.1 present in Court submits that he will visit the Oriental Insurance Co. Ltd., Regional Manager, Legal Deptt, O/C Ltd., DRO-II, Scope Minar, Core-I(F.F.), Laxmi Nagar District Centre, Delhi – 110092 on 21st October, 2013 at 4.00 pm to settle the matter.


J.R. MIDHA, J

OCTOBER 10, 2013

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