

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

Date of decision: 16th August, 2012

+ **MAC.APP. 541/2011**

NATIONAL INSURANCE CO. LTD. Appellant
Through Ms. Manjusha Wadhwa, Adv.
Ms. Arpan Wahdwan, Adv.

versus

ASHOK KUMAR & ORS. Respondents
Through Mr. D.K.Gupta, Adv.

+ **MAC.APP. 251/2012**

ASHOK KUMAR & ORS. Appellants
Through Mr. D.K.Gupta, Adv.

versus

NATIONAL INSURANCE CO. LTD. Respondent
Through Ms. Manjusha Wadhwa, Adv.
Ms. Arpan Wahdwan, Adv.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These two Appeals arise out of a common judgment dated 15.03.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹11,78,356/- was awarded in favour of Respondent No.1 (the Claimant) for having suffered injuries in a motor vehicle accident which occurred on 24.02.2010.

2. For the sake of convenience, the Appellant National Insurance Company Ltd. shall be referred to as the Appellant and the First Respondent shall be referred to as the Claimant.
3. In the absence of any Appeal by the driver, owner or the Insurer, the finding on negligence has attained finality between the parties.
4. The Claimant suffered crush injury on his right foot as a result of which he was admitted in Sir Ganga Ram Hospital. It is proved on record that there was an amputation of 2nd and 5th toe of right foot. He remained admitted in Naar Kanwar Surana Hospital from 24.02.2010 to 25.02.2010 and then in Sir Ganga Ram Hospital from 25.02.2010 to 20.03.2010. The Claimant underwent successive surgeries. He was re-admitted in Sir Ganga Ram Hospital on 16.04.2010 where debridement and skin grafting was done. The injuries suffered resulted in 42% disability in respect of his right lower limb (Ex.PW-5/A); mainly on account of restriction in movement, loss of muscle strength, difficulty in squatting on floor and standing on the affected leg (Ex.PW-5/B.)
5. It is urged by the learned counsel for the Appellant that the Claimant did not loss his earning capacity. He was working as a Medical Record Clerk in a hospital run by Municipal Corporation of Delhi (MCD). At the time of the accident, he was getting a salary of ₹21,602/- which increased to ₹24,491/- during the pendency of the Claims Petition. Thus, the Claimant did not suffer any loss on account of future earning capacity. Reliance is placed on *Raj Kumar v. Ajay Kumar & Anr., 2011 (1) SCC 343*. It is contended that the Claims Tribunal erred in granting a sum of ₹ 5,05,500/- towards loss of future earning capacity.

6. It is urged that the compensation of ₹1,00,000/- awarded towards pain and suffering, ₹75,000/- towards disfigurement and ₹1,00,000/- towards loss of amenities is on the higher side.
7. On the other hand, learned counsel for the Claimant urges that the Claimant proved on record the bills worth ₹3,53,967/-. The Claims Tribunal granted only a compensation of ₹2,70,950/- against the said expenditure.
8. It is stated that for the purpose of awarding compensation for loss of leave of six months, the Claims Tribunal took the deceased's income as Rs.15,151/- instead of Rs.21,602/- which was proved by a Certificate Ex.PW-2/1.
9. It is contended that no compensation was awarded towards future treatment. The learned counsel of the Claimant supports the judgment on the loss of earning capacity on the ground that he would not be able to carry out any work after his retirement from the MCD.
10. 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 permanent 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.

x x x x x x x

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."

11. Admittedly, the Claimant was working as a Medical Record Clerk in a hospital run by MCD. He did not suffer any loss of his future earning capacity rather his income increased on account of increments and enhancement of DA, as is evident from the salary certificate Ex.PW-3/1

for September, 2010. Thus, there is no manner of doubt that the Claimant did not suffer any loss of earning capacity.

12. No evidence was produced by the Claimant with regard to his educational qualification or potential employment after his superannuation. In the circumstances, I am of the view that the Claimant did not suffer in his future earning capacity. The Claims Tribunal erred in awarding compensation of ₹5,05,500/-. The same is set aside.

NON PECUNIARY DAMAGES

13. 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 and loss of marriage prospects.
14. In this case, the accident took place after six years of the accident in *Govind Yadav*. As stated earlier, the Claimant would have difficulty in walking, running, squatting, stiffness in his joints and on account of loss of muscle power. He would not be able to stand on his affected right leg.
15. It is difficult to measure in terms of money the pain and suffering which is 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.

16. The Claimant remained admitted in different hospitals for a period of about one month. He underwent successive surgeries and remained confined to bed for a period of about six months. Considering the nature of injuries and the circumstances stated above the compensation of ₹1,00,000/- awarded towards pain and suffering cannot be said to be exorbitant or excessive. Similarly, the compensation of ₹75,000/- towards disfigurement and ₹1,00,000/- towards loss of amenities and enjoyment in life is just and reasonable.

LOSS OF INCOME

17. The Claims Tribunal awarded a sum of ₹ 90,906/- taking the Claimant's income to be ₹15,151/-. There was no justification for deduction of transport allowance, patient care allowance and medical allowance as the Claimant would not be able to entitle to these allowances if he has to take leave without pay. Thus, I would award a compensation of ₹1,29,612/- (21,602/- x 6) as against ₹90,906/- awarded by the Claims Tribunal for loss of leave for six months.

MEDICAL TREATMENT

18. The Claims Tribunal granted a sum of ₹2,70,950/- towards medical treatment. I have before me the original bills placed on Trial Court Record which have been totalled up by the counsel for both the parties. The total sum comes to ₹3,53,967/-. In the circumstances, I would award a compensation of ₹3,55,000/- towards medical treatment received by the Claimant.

FUTURE MEDICAL TREATMENT

19. The learned counsel for the Claimant drew my attention to the prescription dated 10.08.2010 placed on the Claims Tribunal's record whereby the Claimant was referred to physiotherapy for gentle spinal exercises and ultrasonic to lower back on account of crush injury with L. spondylosis. In the circumstances, it is established on record that the Claimant would need some treatment and physiotherapy because of the injury suffered by him. I would award him a sum of ₹25,000/- towards future treatment.
20. The compensation awarded is recomputed as under:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Medical Expenses	₹2,70,950/-	₹3,55,000/-
2.	Future Expenses	--	₹25,000/-
3.	Diet & Conveyance Charges	₹ 18,000/-	₹ 18,000/-
4.	Attendant Charges	₹ 18,000/-	₹ 18,000/-
5.	Loss of Income	₹ 90,906/-	₹ 1,29,612/-
6.	Loss of Future Earning	₹ 5,05,500/-	--
7.	Pain & Suffering	₹ 1,00,000/-	₹ 1,00,000/-
8.	Disfigurement	₹ 75,000/-	₹ 75,000/-
9.	Inconvenience & Loss of Future Enjoyment	₹ 1,00,000/-	₹ 1,00,000/-
	Total	₹ 11,78,356/-	₹ 8,20,612/-

21. The compensation stands reduced from ₹11,78,356/- to ₹ 8,20,612/-.
22. The excess amount of ₹3,57,744/- along with proportionate interest and the interest accrued, if any, during pendency of the Appeal shall be refunded to the Appellant Insurance Company.
23. The compensation payable to the Claimant shall be released in terms of the order passed by the Claims Tribunal.
24. The statutory deposit of ₹25,000/-, if any, shall be refunded to the Appellant Insurance Company.
25. Both the Appeals are allowed in above terms.
26. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

AUGUST 16, 2012
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