

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

Decided on: 14th March, 2012

+ **MAC.APP.602/2011**

ORIENTAL INSURANCE CO LTD Appellant
Through Mr. R.C. Mahajan, Adv.

versus

A MOHAN & ORS Respondent
Through Mr. Anwesh Madhukar, 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 ₹4,61,967/- awarded to the Appellant for having suffered grievous injuries in an accident which occurred on 07.07.2007. By the impugned judgment the Claims Tribunal awarded a compensation of ₹4,61,967/- under various heads as mentioned in para 11 of the judgment which is extracted hereunder:

“Following is the just compensation:-

- | | | | |
|----|-----------------------------|---|-------------|
| 1. | Loss of income due to leave | : | ₹1,06,995/- |
| 2. | Loss of income | : | ₹3,09,972/- |
| 3. | Pain and suffering | : | ₹25,000/- |
| 4. | Special Diet | : | ₹15,000/- |

5. Conveyance Expenses : ₹5,000/-
Total : ₹4,61,967/-

2. The only ground of challenge during the course of the arguments is that the First Respondent has been awarded a compensation of ₹3,09,972/- on account of loss of earning capacity, although there is no evidence that the Appellant suffered any loss of earning capacity. It is stated that the Appellant was employed as a room attendant in Hotel Maurya. He continued his employment with the said hotel. No evidence was led that his salary/income was affected and thus a sum of ₹3,09,972/- is required to be deducted from the compensation awarded.
3. On the other hand, it is submitted by the learned counsel for the Appellant that a certificate Ex.PW1/11 issued by Shakuntala Nursing Home clearly showed that his left knee was stiff (full extension to 80 degree flexion). This certificate was not challenged by the Appellant. The first Respondent suffered a loss on account of the fact that at the time of the accident, he was working as a room attendant and was getting tips. Although his salary was not affected, but, he lost on tips given by the customers, as after the accident he was posted in the accounts department.
4. In *Raj Kumar v. Ajay Kumar & Anr.*, 2011 (1) SCC 343, the Supreme Court considered in great detail the co-relation

between the physical disability suffered in an accident and the loss of earning capacity resulting from it. The relevant portion of the report is extracted hereunder :-

“11. What requires to be assessed by the Tribunal is the effect of the permanently 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.

12. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence:

(i) whether the disablement is permanent or temporary;

(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement,

(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person.

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

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 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.

5. The First Respondent did not lead any evidence, rather it is admitted that his salary was not affected. It is also not proved on record whether the First Respondent was posted in Accounts Department on account of the injury suffered by him in the

accident or for some other reason and whether he suffered any financial loss on account of non receipt of the tips from the customers. In this view of matter, future loss of earning capacity could not have been granted by the Claims Tribunal.

6. At the same time, it has to be noticed that the Appellant suffered fracture of left knee. He was operated upon in Kolmet Hospital where a rod was inserted and bone grafting was done. He remained hospitalised from 07.07.2007 to 18.07.2007. He also remained on bed rest for seven months. The expenses for his treatment were reimbursed to him by his employer and the Claims Tribunal adequately compensated him for loss of leave / loss of income by awarding him a sum of ₹1,06,995/-. The certificate Ex.PW1/11 which was issued in the year 2011 shows that there was still stiffness in the left knee and full extension was only upto 80 degree. The First Respondent would have difficulty in discharging his duties, in walking, running and squatting. He is, therefore, entitled to be compensated under the head of loss of amenities.
7. 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. Considering the nature of injury, body part affected and the period of confinement, the compensation of ₹25,000/- awarded towards pain and suffering was also low. The compensation is recomputed as under:

		Compensation awarded by Claims Tribunal	Compensation awarded by this court
1.	Loss of income due to leave	₹1,06,995/-	₹1,06,995/-
2.	Loss of income (earning capacity)	₹3,09,972/-	Nil
3.	Pain and suffering	₹25,000/-	₹50,000/-
4.	Special Diet	₹15,000/-	₹15,000/-
5.	Conveyance Expenses	₹5,000/-	₹5,000/-
6.	Loss of amenities in life	Nil	₹75,000/-
	Total	₹4,61,967/-	₹2,51,995/-

8. In view of the above discussion, the compensation is reduced from ₹4,61,967/- to ₹2,51,995/-. The compensation of ₹2,51,995/- alongwith interest as awarded by the Tribunal shall be payable to the First Respondent and shall be released forthwith. The excess amount alongwith proportionate interest and interest accrued during the pendency of the Appeal shall be

refunded to the Appellant.

9. Statutory amount of ₹25,000/- shall also be refunded.
10. The Appeal is allowed in above terms.
11. No costs.

(G.P. MITTAL)
JUDGE

MARCH 14, 2012/NS