

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

Date of decision: 10th October, 2012

+ **MAC. APP. 675/2011**

NEW INDIA ASSURANCE COMPANY LTD. Appellant
Through: Mr. K.L.Nandwani, Adv.

versus

DEEPAK KUMAR & ORS. Respondents
Through Mr. K.K. Dubey, 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 Appellant New India Assurance Company Limited impugns a judgment dated 03.05.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) in MACT Suit No.541/09/2008 whereby a compensation of ₹4,66,800/- was awarded in favour of the First Respondent for having suffered injuries in a motor vehicle accident which occurred on 19.08.2008.
2. On 19.08.2008 at about 8:30 A.M. the First Respondent was proceeding to his place of work at Gandhi Nagar. When the First Respondent reached near 4th Pusta, Pusta Road, Usmanpur, Delhi a TSR was proceeding ahead of him. The said TSR suddenly applied the brakes. He (the First Respondent) therefore stopped his bicycle and got dis-balanced. In the meanwhile, a RTV No.DL-IV-7976 which was driven by the Second Respondent in a rash and negligent manner came from behind and ran over his right leg. The First Respondent suffered crush injury on

his right foot. He was immediately removed to GTB hospital where he remained admitted from 19.08.2008 to 25.08.2008. An external fixator was applied on 20.08.2008. He (the First Respondent) remained under treatment for nine months.

3. The First Respondent claimed that he spent a sum of ₹50,000/- towards his treatment. He proved some of the bills Exs.PW-1/9 to PW-1/18. He deposed that rest of the bills were misplaced. He could not attend to his work for a period of about one year and suffered loss of income @ ₹6,000/- per month.
4. On account of the injuries, the First Respondent suffered 44% permanent locomotor impairment in relation to his right lower limb as stated in disability certificate Ex.PW-1/19, which was issued by the Medical Board of GTB hospital on the directions of the Claims Tribunal.
5. The Claims Tribunal awarded compensation of ₹4,66,800/- which is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Future Earning Capacity	₹2,18,800/-
2.	Medical Expenses	₹ 6924/-
3.	Special Diet	₹5,000/-
4.	Attendant Charges	₹9,000/-
5.	Conveyance Charges	₹7,000/-
6.	Pain and Suffering	₹50,000/-

7.	Loss of Amenities of Life	₹ 1,00,000/-
8.	Loss of Marriage Prospects	₹ 20,000/-
9.	Permanent Disability	₹50,000/-
	Total	₹ 4,66,724/-
	Rounded off	₹ 4,66,800/-

6. The following contentions are raised on behalf of the Appellant:-

- (i) There was contributory negligence on the part of the First Respondent. The compensation awarded is liable to be proportionately deducted.
- (ii) The Disability certificate has not been proved and loss of earning capacity has been wrongly assessed.

NEGLIGENCE

7. The First Respondent in his Affidavit Ex.PW-1/X testified that on 19.08.2008 at about 8:30 A.M. while riding on his cycle he reached 4th Pusta, Pusta Road, Usmanpur, he had to stop his bicycle on account of the sudden stoppage of the TSR going ahead of him. He was ran over by a speeding RTV No.DL-IV-7976 driven by the Second Respondent in a rash and negligent manner. In cross-examination, the manner of the accident was not disputed. The First Respondent denied the suggestion that he suffered injuries as he had fallen down because of sudden application of brakes by the TSR. A criminal case bearing FIR No.190/2008, Police Station New Usmanpur was registered against the Second Respondent. The Second Respondent did not come forward to rebut the First Respondent's testimony. In the circumstances, an

inference of culpable negligence can be drawn against the Second Respondent on the touchstone of preponderance of probability.

8. In *Bimla Devi and Ors. v. Himachal Road Transport Corporation and Ors.*, (2009) 13 SC 530, while holding that in a petition under Section 166 of the Act for award of compensation, the negligence has to be proved on the touchstone of preponderance of probability, in para 15, it was observed as under:-

“15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

9. The observations of the Supreme Court in *Bimla Devi (supra)* were referred with approval in later judgment in *Parmeshwari Devi v. Amir Chand and Ors.*, (2011) 11 SCC 635.
10. Thus, negligence is amply proved for the purpose of a Claim Petition under Section 166 of the Motor Vehicles Act, 1988 (the Act).

QUANTUM

11. Coming to the quantum of compensation, the First Respondent claimed that he was working in a cloth merchant's shop and getting a salary of ₹6,000/- per month. The First Respondent had studied upto 9th standard. Even if, no evidence was adduced with regard to First Respondent's

income, the Minimum Wages of a non-Matriculate should have been taken to compute the loss of income and the loss of earning capacity.

12. I have before me the Trial Court Record which shows that by order dated 15.10.2009 a direction was issued to the Medical Superintendent, GTB Hospital to constitute a Medical Board and to examine the First Respondent and to report about the disability, if any suffered by him (the First Respondent). In pursuance to the said directions, a disability certificate Ex.PW-1/19 was issued by the Medical Board headed by Dr. U.C. Verma, Medical Superintendent, GTB Hospital. The Medical Board declared that the First Respondent suffered 44% locomotor impairment in relation to his right lower limb. Thus, there is no ground to suspect the genuineness of the disability certificate. At the same time, the First Respondent did not produce any expert evidence to show as to how 44% permanent locomotor impairment in relation to his right lower limb affected his earning capacity.
13. The First Respondent was content to state in his Affidavit that his entire career and future has been jeopardized on account of the injuries suffered in the accident and he would suffer from it throughout his life.
14. The locomotor disability is a person's inability to execute distinctive activities associated with moving himself and moving the objects from place to place. Thus, the First Respondent would have difficulty in moving, walking, climbing and sitting which would definitely affect his earning capacity.
15. 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.”

16. In the absence of any specific evidence with regard to the exact functional disability, I would take the functional disability to the extent of 22% affecting the loss of First Respondent's earning capacity who admittedly was a non-Matriculate and a Manual worker. The First Respondent would be entitled to an addition of 30% only as against 50% granted by the Claims Tribunal on the basis of the judgment of the Supreme Court in *Santosh Devi v. National Insurance Company Ltd. & Ors., 2012 (4) SCALE 559*.
17. The loss of earning capacity thus comes to ₹2,39,382/- (3875/- + 30% x 12 x 18 x 22%).
18. The First Respondent claimed that he spent a sum of ₹50,000/- towards his treatment. He was able to produce bills for ₹6,924/-. He deposed that rest of the bills were misplaced. The Claims Tribunal in the absence of any explanation for loss of some of the bills awarded a compensation of ₹6,924/- only. I have no material to disturb this finding of the Claims Tribunal.
19. The First Respondent's testimony that he was under treatment for a period of about nine months was not challenged in the cross-examination. Thus, the First Respondent would be entitled to a sum of ₹34,875/- (3975/- x 9), towards loss of Income.

20. It is urged by the learned counsel for the Appellant that a sum of ₹1,00,000/- awarded towards loss of amenities and ₹20,000/- awarded towards marriage prospects is on the higher side.
21. 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 in its discretion awarded a total sum of ₹1,20,000/- under this head, which cannot be said to be exorbitant or excessive.
22. The Claims Tribunal awarded compensation of ₹50,000/- towards permanent disability. The same is duplication of award of compensation as he has already been granted compensation towards loss of earning capacity and loss of amenities. There was no necessity for awarding another sum of ₹50,000/- towards permanent disability.
23. The compensation awarded is re-computed as under:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Future Earning Capacity	₹2,18,800/-	₹2,39,382/-
2.	Medical Expenses	₹ 6924/-	₹ 6,924/-
3.	Special Diet	₹5,000/-	₹5,000/-
4.	Attendant Charges	₹9,000/-	₹9,000/-
5.	Conveyance Charges	₹7,000/-	₹7,000/-
6.	Pain and Suffering	₹50,000/-	₹50,000/-

7.	Loss of Amenities of Life	₹ 1,00,000/-	₹ 1,00,000/-
8.	Loss of Marriage Prospects	₹ 20,000/-	₹ 20,000/-
9.	Permanent Disability	₹50,000/-	--
10.	Loss of Income	--	₹ 34,875/-
	Total Rounded off	₹ 4,66,724/- ₹ 4,66,800/-	₹ 4,72,181/-

24. The overall compensation of ₹4,66,800/- awarded by the Claims Tribunal cannot be said to be niggardly. The same is just and reasonable.
25. The Appeal, therefore, has to fail; the same is accordingly dismissed.
26. The statutory deposit of ₹25,000/- shall be refunded to the Appellant Insurance Company.
27. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 10, 2012
vk

\$~40

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

+ MAC.APP. 675/2011

NEW INDIA ASSURANCE CO LTD Appellant

Through: Ms.Shivali Bansal, Advocate

versus

DEEPAK KUMAR & ORS Respondent

Through: Mr.K.K.Dubey, Advocate for R-1

CORAM:

HON'BLE MR. JUSTICE G.P. MITTAL

ORDER

% **14.12.2012**

CM APPL.20793/2012

1. There is a clerical mistake in para 24 of the judgment dated 10.10.2012. The overall compensation of Rs. 4,66,800/- awarded by the Claims Tribunal cannot be said to be excessive. The same is just and reasonable.
2. After correct, Para 24 of the judgment dated 10.10.2012, shall be read as under:-

“24. The overall compensation of ₹4,66,800/- awarded by the Claims Tribunal cannot be said to be excessive. The same is just and reasonable.”
3. The amount of compensation deposited by the Appellant Insurance Company shall be released in favour of the Respondents (Claimants) in terms of the order passed by the Claims Tribunal.

4. The Application stands disposed of.

G.P. MITTAL, J

DECEMBER 14, 2012

v