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

Date of decision: 12th December, 2012

+ **MAC. APP. 745/2011**

BULAN DAS

..... Appellant

Through: Mr. F.K. Jha, Advocate.

Versus

DHARAMBEER & ORS.

..... Respondents

Through: Mr. Sameer Nandwani, Advocate for the
Respondents No.3 Insurance Company.

+ **MAC. APP. 814/2011**

RELIANCE GENERAL INSURANCE CO. LTD. Appellant

Through: Mr. Sameer Nandwani, Advocate

Versus

BULAN DAS & ORS.

..... Respondents

Through: Mr. F.K. Jha, Advocate for the
Respondents No.1.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. In view of the judgment dated 05.11.2012 passed by the Supreme Court of India in Civil Appeal No.7874/2012, the Appeal

(MAC.APP.814/2011) is restored to its original number.

2. These two Appeals arise out of a judgment dated 06.06.2011 passed by the Motor Accident Claims Tribunal(the Claims Tribunal) whereby a compensation of ₹18,69,000/- was awarded in favour of Bulan Das who suffered injuries in a motor vehicle accident which occurred on 01.09.2010.
3. MAC.APP.745/2011 has been filed by Bulan Das, who suffered amputation of both of his legs below knee, for enhancement of compensation on the ground that the functional disability should have taken as 100% as against 88% taken by the Claims Tribunal. It is stated that the compensation awarded towards non-pecuniary damages is on the lower side.
4. On the other hand, the plea of the Appellant Reliance General Insurance Co. Ltd. (in MAC.APP.814/2011) is that the compensation awarded is excessive and exorbitant inasmuch as an addition of 50% was made by the Claims Tribunal on account of future prospects in spite of the fact that there was no evidence with regard to the same. It is contended that the compensation awarded towards non-pecuniary damages is on the higher side.
5. For the sake of convenience, Appellant in MAC.APP.745/2011 shall be referred to as Claimant and Appellant in MAC.APP.814/2011 shall be referred to as the Insurance Company.
6. The finding on negligence reached by the Claims Tribunal is not challenged by the Appellant Insurance Company; thus the same has attained finality.
7. The Claims Tribunal awarded a compensation of ₹18,69,000/-, which is tabulated hereunder:

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Medicines & Treatment	₹10,000/-
2.	Loss of Income	₹ 32,600/-
3.	Loss of Earning Power	₹ 15,12,000/-
4.	Loss of Amenities	₹ 75,000/-
5.	Attendant Charges	₹ 50,000/-
6.	Loss of Marriage Prospects	₹ 50,000/-
7.	Pain & Suffering	₹ 1,00,000/-
8.	Conveyance & Special Diet	₹ 40,000/-
	Total	₹ 18,69,000/-

8. The trend of the Superior Courts is to award full and fair compensation. In the case of *Raj Kumar v. Ajay Kumar & Anr.*, 2011 (1) SCC 343, the Supreme Court observed that the object of awarding damages is to make good the loss suffered as a result of the wrong done as far as money can do in a fair, reasonable and equitable manner. Paras 5 and 6 of the report are extracted hereunder:-

“5. The provision of the Motor Vehicles Act, 1988 ('the Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration

any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. [See C.K. Subramonia Iyer v. T. Kunhikuttan Nair, AIR 1970 SC 376, R.D. Hattangadi v. Pest Control (India) (P) Ltd., 1995 (1) SCC 551 and Baker v. Willoughby, 1970 AC 467.

9. In *Arvind Kumar Mishra v. New India Assurance Company Limited*, (2010) 10 SCC 254, the Supreme Court dealt with the case of disability of an engineering student. The Supreme Court observed that while awarding compensation in personal injury cases, an attempt should be made to put the injured in the same position as he was as far as money is concerned. In para 9 of the report, the Supreme Court held as under:

“9. We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was insofar as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered.”

10. In *Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka & Ors.*, (2009) 6 SCC 1, the Supreme Court emphasized that cases of serious injuries in motor vehicle accident are worse than the death cases because the victim and his family suffers throughout life. Para 90 of the report is extracted hereunder:-

“90. At the same time we often find that a person injured in an accident leaves his family in greater distress vis-à-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity.”

LOSS OF FUTURE EARNING CAPACITY:

11. During inquiry before the Claims Tribunal, it was claimed that the injured was working as a delivery boy with M/s. Shiv Shakti Building Pvt. Ltd. and earning ₹8,250/- per month. The Claimant failed to produce any evidence with regard to the income. The Claims Tribunal thus for the purpose of making assessment of the loss of future earning capacity took the minimum wages of an unskilled worker. The Claims Tribunal made an addition of 50% towards inflation on the basis of judgment of this Court in *Narinder Bishal & Anr. v. Sh. Rambir Singh & Ors.*, (MAC.APP.1007-08/2006) decided on 20.02.2008 and *General Manager, Kerala Road Transport Corporation, Trivandrum v. Susamma Thomas & Ors.*, (1994) 2 SCC 176 and *Sarla Dixit v. Balwant Yadav*, (1996) 3 SCC 179.
12. Admittedly, the Claimant did not produce any evidence with regard to his future prospects. In *Bijoy Kumar Dugar v. Bidya Dhar Dutta & Ors.*, (2006) 3 SCC 242 and *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, the Supreme Court laid down that augmentation towards future prospects has to be made only when there is an evidence with regard to the future prospects of the deceased/victim or

when he/she is in permanent employment. In the instant case, the Claimant was neither in permanent employment nor did he produce any evidence with regard to his future prospects. Thus, addition of 50% towards future prospects was not justified. On the other hand, there could be an addition of 30% on account of inflation on the basis of report of the Supreme Court in *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559.

13. The Claims Tribunal took the functional disability on account of amputation of both lower limbs below knee to be 88% as was mentioned in the disability certificate. 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 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.

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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."

14. In the instant case, the Claimant was working as a delivery boy. In any case, he was a menial labour. In the circumstances, on account of amputation of both of his lower limbs, it would be difficult for the Claimant to carry any menial work. Practically, the functional disability in his case is 100%. The loss of future earning capacity thus comes to ₹14,88,240/- (₹5,300/- + 30% x 12 x 18) as against ₹15,12,000/- awarded by the Claims Tribunal.
15. It is urged by the learned counsel for the Claimant that award of compensation of ₹75,000/- towards loss of amenities and ₹1,00,000/- towards pain and suffering is on the lower side, whereas the learned counsel for the Insurance Company states that only a notional sum should

be awarded towards loss of amenities otherwise there would be duplication of the award.

16. In the case of *Govind Yadav v. New India Insurance Co. Ltd. (2011) 10 SCC 683*, in case of amputation of leg above knee of a victim aged 24 years in an accident which took place in the year 2004, a compensation of ₹1,50,000/- was awarded towards pain and suffering and ₹1,50,000/- towards loss of amenities in life and loss of marriage prospects. The award of compensation of ₹1,00,000/- towards pain and suffering is consequently increased to ₹1,50,000/-, whereas the compensation awarded towards loss of amenities is reduced from ₹75,000/- to ₹40,000/-.
17. The compensation awarded is recomputed as under:

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Medicines & Treatment	₹10,000/-	₹10,000/-
2.	Loss of Income	₹ 32,600/-	₹ 32,600/-
3.	Loss of Earning Capacity	₹ 15,12,000/-	₹ 14,88,240/-
4.	Loss of Amenities	₹ 75,000/-	₹40,000/-
5.	Attendant Charges	₹ 50,000/-	₹50,000/-
6.	Loss of Marriage Prospects	₹ 50,000/-	₹ 50,000/-
7.	Pain & Suffering	₹ 1,00,000/-	₹ 1,50,000/-
8.	Conveyance & Special Diet	₹ 40,000/-	₹ 40,000/-
	Total	₹ 18,69,000/-	₹ 18,60,840/-

18. Thus, an award of ₹18,69,000/- cannot be said to be excessive and exorbitant. The overall compensation awarded is just and reasonable.
19. The Appeals are devoid of any merit; the same are accordingly dismissed.
20. The compensation awarded shall be released in favour of the Claimant in terms of orders passed by the Claims Tribunal.
21. Statutory amount of ₹25,000/-, if any, shall be refunded to the Appellant Insurance Company.
22. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

DECEMBER 12, 2012

pst