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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 3rd December, 2012

+ **MAC. APP. 919/2011**

VIDYA DHAR SHARMA Appellant
Through: Mr. S.N. Parashar, Advocate.

Versus

BADRI PRASAD & ORS. Respondents
Through: Mr. Anuj Kumar Ranjan, Advocate for the
Respondent No.1 & 2.
Mr. Ram Ashray with Mr. S.L. Gupta,
Advocates for the Respondent No.3
Insurance Co.

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 enhancement of compensation of ₹11,99,860/- awarded in favour of the Appellant by the Motor Accident Claims Tribunal (the Claims Tribunal) for having suffered injuries in a motor vehicle accident which occurred on 17.08.2010 resulting in the amputation of his right hand above elbow. The Appellant suffered 80% permanent disability in respect of his right upper limb as per the disability certificate Ex.PW 1/2 issued by the Medical Board of Hindu Rao Hospital.
2. In the absence of any Appeal by the driver, owner or the Insurance Company, the finding on negligence has attained finality.
3. The following contentions are raised on behalf of the Appellant:

- (i) The Appellant was a self employed person and used to deal in supply of yarn. His earning capacity was substantially affected as was evident from the Income Tax Returns filed for the Assessment year next to the date of the accident. The Claims Tribunal erred in granting just 20% loss of earning capacity.
- (ii) No compensation was awarded towards purchase of artificial limb or its maintenance.

4. On the other hand, the learned counsel for the Respondent Insurance Company urges that the compensation awarded is just and reasonable.

LOSS OF EARNING CAPACITY:

5. 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."

6. In the Claim Petition, it was pleaded that the Appellant was a self-employed person and was marketing in yarn. The Appellant was an Income Tax Assessee much before the date of the accident. He proved on record the Income Tax Returns for the A.Y. 2008-09, 2009-10 and 2010-11 whereby he returned an income of ₹1,18,100/-, ₹1,54,450/- and ₹2,51,100/- respectively. The Appellant proved on record the Income

Tax Return for the A.Y. 2011-12 when his income substantially fell to ₹1,15,060/- as noticed by the Claims Tribunal.

7. The right hand plays an important role in carrying out the activities including business. The Appellant, however, did not prove the exact nature of work performed by him. In *Raj Kumar(supra)*, in the absence of any specific evidence, the Supreme Court took 45% disability in respect of left lower limb as 20% loss of future earning capacity. In the instant case, I would make a guess work and would take loss of future earning capacity as 40% (50% of 80%). The Appellant would be entitled to an addition of 30% on account of inflation on the basis of the Supreme Court report in *Santosh Devi v. National Insurance Company Ltd. & Ors., 2012 (4) SCALE 559*. The loss of future earning capacity thus comes to ₹19,11,780/- (₹2,51,100/- - 6,000/- (Income Tax) + 30% x 15 x 40%).
8. The Appellant was a self-employed person paying Income Tax. His grievance is that he has not been awarded any compensation for purchase of artificial limb. No evidence was produced by him to prove the cost of artificial limb. In the circumstances, I would award a sum of ₹50,000/- towards purchase of artificial limb and a lumpsum compensation of ₹25,000/- towards its maintenance during life time.
9. The compensation awarded is recomputed hereunder:

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Medical Expenses	₹50,000/-	₹50,000/-
2.	Special Diet and Conveyance	₹ 9,000/-	₹ 9,000/-
3.	Attendant Charges	₹ 7,500/-	₹ 7,500/-

4.	Loss of Income	₹ 1,15,060/-	₹ 1,15,060/-
5.	Loss of Future Income	₹ 7,53,300/-	₹19,11,780/-
6.	Pain and Suffering, Loss of Amenities of Life/Loss of Expectation of Life and Disfigurement	₹ 3,00,000/- (₹1,00,000/- each)	₹ 3,00,000/-
7.	Purchase of Artificial Limb and its Maintenance	-	₹ 75,000/- (₹50,000/- + ₹25,000/-)
	Total	₹ 11,99,860/-	₹ 24,68,340/-

10. The enhanced compensation of ₹12,68,480/- shall carry interest @ 7.5% per annum as awarded by the Claims Tribunal. 75% of the enhanced compensation shall be held in fixed deposit for a period of five years and ten years in equal proportion, rest of the amount shall be released on deposit. The Appellant would be entitled to quarterly interest on the amount deposited.
11. The Respondent No.3 Insurance Company is directed to deposit the enhanced compensation of ₹12,68,480/- along with interest with the Claims Tribunal within six weeks.
12. The Appeal is allowed in above terms.
13. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

DECEMBER 03, 2012

pst