

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

Date of decision: 23rd May, 2012

+ **MAC.APP. 779/2010**

AMAN

..... Appellant

Through: Mr. S.N. Parashar, Advocate

versus

SANJAY PANDEY & ORS

..... Respondent

Through: Ms. Suman Bagga, Advocate
for R-3.

+ **MAC.APP. 813/2010**

ICICI LOMBARD GENERAL INSURANCE CO LTD..

..... Appellant

Through: Ms. Suman Bagga, Advocate

versus

AMAN & ORS

..... Respondents

Through: Mr. S.N.Parashar, Advocate 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. These two Appeals MAC APP.779/2010 and MAC APP.813/2010 arise out of a common judgment dated 26.7.2010 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹5,69,600/- (including the

interim compensation of ₹25,000/- was awarded in favour of the Appellant Aman (in MAC APP.779/2010) for having suffered injuries in a motor accident which occurred on 26.10.2007.

2. For the sake of convenience, Aman Appellant in MAC APP.779/2010 shall be referred to as the Claimant and the Appellant ICICI Lombard General Insurance Company Limited in MAC APP.813/2010 shall be referred to as the Insurer.
3. The facts of the case are not disputed. On 26.10.2007 at about 4:30 A.M., the Claimant was returning to Subzi Mandi, Shahdara after purchasing vegetables from Subzi Mandi, Gazipur. He was travelling in tempo No.DL-1LH-7715 along with vegetables. When the tempo reached Keshav Chowk, Shahdara, the tempo driver (the First Respondent) took a sharp turn while driving the tempo at a high speed. As a result of this, the driver lost control of the tempo which capsized. The Claimant suffered serious crush injury of his left foot. He was immediately removed to GTB hospital. The doctors were unable to save his left leg. The same had to be amputated below knee. He was discharged from the hospital on 31.10.2007.
4. It was claimed that the deceased was earning ₹6,000/- per month from selling vegetables. He became totally disabled on account of permanent disability in respect of the left lower limb to the extent of 60% suffered by him. His marriage prospects diminished because of the disfigurement.

5. The Claims Tribunal awarded the compensation which is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Reimbursement on Medical Expenses	₹4,000/-
2.	Loss of Earning for 9 months presuming income of ₹4,000/- per month.	₹ 36,000/-
3.	Disability 60%	₹ 4,89,600/-
4.	Pain & Suffering and other Allied Expenses including Loss of Amenities of Life.	₹ 40,000/-
	Total	₹ 5,69,600/-

6. The Claimant's grievance is that in view of the injuries suffered, he should have been granted loss of earning capacity to the extent of 100% as he is unable to work at all. Addition on account of future prospects ought to have been made. The compensation towards pain and suffering, loss of amenities in life is too meager. No compensation has been awarded to him for loss of marriage prospects.
7. On the other hand, learned counsel for the Insurer urges that 60% disability suffered by the Claimant was in respect of the left lower limb only on account of amputation below knee. This could not result into loss of earning capacity to the extent of

60%. At the most, it could be taken to be 25% to 30% in respect of the whole body.

8. In *General Manager, Kerala Road Transport Corporation, Trivandrum v. Susamma Thomas & Ors.*, (1994) 2 SCC 176, the Supreme Court held as under: -

“5.....The determination of the quantum must answer what contemporary society "would deem to be a fair sum such as would allow the wrongdoer to hold up his head among his neighbours and say with their approval that he has done the fair thing". The amount awarded must not be niggardly since the law values life and limb in a free society in generous scales'. All this means that the sum awarded must be fair and reasonable by accepted legal standards.”

9. The minimum wages of an unskilled worker on the date of the accident were ₹3516/- per month. The Claims Tribunal on making assessment held the Claimant's income to be ₹4,000/- per month as against his claimed income of ₹6,000/- per month. In the absence of any cogent evidence with regard to the income, the Claims Tribunal's finding with regard to the income cannot be faulted. In the absence of any evidence with regard to the future prospects, the Claimant was not entitled to any addition on account of future prospects. (*Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121).
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 find 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. Thus, the same disability may have a different impact on the earning capacity of an injured following a different vocation.
12. In the instant case, the Claimant was a vegetable seller. It is evident that in connection with his business he used to visit Subzi Mandi, Gazipur. The Claimant was not doing any desk work. Even if, he would be sitting while selling the vegetables, it would require active movement of his hand and legs in attending to the customers. Even for purchasing vegetables his movement would be restricted by loss of left lower limb below knee.
13. In the circumstances, I would assess the extent of permanent disability affecting loss of his earning capacity to the extent of

40%. The compensation payable under this head comes to ₹3,45,600/- (4,000/- x 12 x 18 (age being 25 years) x 40%).

14. The Claimant suffered crush injury on his left foot. He remained admitted in GTB hospital from 26.10.2007 to 31.10.2007. As stated earlier, there was amputation of left leg below knee resulting into 60% disability in respect of left lower limb.
15. In the case of *Govind Yadav v. New India Assurance Co. Ltd.*, 2011(10) SC 683, the Supreme Court had the occasion to deal with the case of an amputation of leg above knee of a victim aged 24 years in a motor accident which took place in the year 2004. The Hon'ble Supreme Court granted a sum of ₹1.5 lakhs towards pain and suffering and ₹1.5 lakhs towards loss of amenities in life and loss of marriage prospects.
16. In this case, the Claimant was aged 25 years on the date of the accident. In the circumstances of the case, I would award a sum of ₹75,000/- towards pain and suffering and ₹1,50,000/- towards loss of amenities and expectations in life, disfigurement and loss of marriage prospects.
17. The Claimant was treated in the govt. hospital and the treatment was free. In the absence of any evidence, the Claims Tribunal awarded a sum of ₹4,000/- towards expenditure on treatment. The same cannot be faulted. Some provision ought to have been made towards special diet and conveyance. I would award a sum of ₹5,000/- each towards special diet and conveyance.

18. The compensation awarded is re-computed as under:-

Sl.No.	Compensation under various heads	Awarded by this Court
1.	Reimbursement on Medical Expenses	₹4,000/-
2.	Loss of Earning for 9 months presuming income of ₹4,000/- per month.	₹ 36,000/-
3.	Disability 40%	₹ 3,45,600/-
4.	Pain & Suffering	₹ 75,000/-
5.	Loss of Amenities and Expectations in Life, Disfigurement & Loss of Marriage Prospects	₹ 1,50,000/-
6.	Special Diet	₹ 5,000/-
7.	Conveyance	₹ 5,000/-
	Total	₹ 6,20,600/-

19. The compensation is thus enhanced from ₹5,69,600/- to ₹6,20,600/-.
20. The enhanced compensation of ₹51,000/- shall carry interest @ 7.5% per annum from the date of filing of the Petition till the date of its payment.
21. The enhanced compensation along with interest shall be deposited in the name of the Claimant in UCO Bank, Delhi

High Court Branch, New Delhi and shall be held in fixed deposit for a period of one year.

22. Insurer, ICICI Lombard General Insurance Company Limited is directed to deposit the enhanced compensation along with interest with UCO Bank, Delhi High Court, New Delhi within six weeks.
23. The statutory amount of ₹25,000/- shall be refunded to the Insurance Company after proof of deposit of the enhanced compensation is filed with the Registrar of this Court by the Insurer.
24. Both the Appeals are allowed in above terms.
25. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

MAY 23, 2012

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