

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

Reserved on: 21st March, 2012

Pronounced on: 30th March, 2012

+ **MAC APP. 855/2010**

AMRIK PRASAD Appellant

Through: Mr. S.K. Parashar, Adv.

versus

SUNIL KUMAR & ORS. Respondents

Through: Mr. Sameer Nandwani, Adv.
for Mr. K.L. Nandwani, Adv.
for R-3.

+ **MAC APP. 726/2010**

NEW INDIA ASSURANCE CO. LTD. Appellant

Through: Mr. Sameer Nandwani, Adv.
for Mr. K.L. Nandwani, Adv.

versus

AMRIK PARSHAD & ORS. Respondents

Through: Mr. S. K. Parashar, Adv.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. These two Cross Appeals arise out of a judgment dated 12.08.2010 whereby a compensation of ₹5,85,942/- was awarded to Amrik Prasad, a tailor by profession, for having suffered amputation of his right leg below knee, in a motor

accident which occurred on 20.10.2006.

2. MAC APP.726/2010 is by New India Assurance Company Limited for reduction of the compensation while MAC APP.855/2010 is for enhancement of compensation.
3. For the sake of convenience Amrik Prasad, the Appellant in MAC 855/2010 shall be referred to as the Claimant and New India Assurance Company Limited shall be referred to as the Insurance Company.
4. Finding on the negligence is not disputed by the Insurance Company, therefore, my task is simply to judge whether the compensation awarded is just and fair or whether it calls for any interference.
5. It is not disputed that immediately after the accident on 20.10.2006, the Claimant was removed to Safdarjung Hospital where an amputation of the right leg had to be carried out because of a serious crush injury. The Claimant was discharged from the hospital on 26.10.2006. A Disability Certificate Ex.PW-1/33 was issued by the Board of Doctors, Safdarjung Hospital to the effect that the Claimant had suffered 60% permanent disability in respect of his right lower limb.
6. During inquiry before the Motor Accident Claims Tribunal (the Claims Tribunal) the Claimant averred that he was working as a tailor with Nirmal Textiles Building No.5, Sector 14, Gurgaon.

He was getting a salary of ₹10,000/- per month. He spent ₹ 40,000/- on his medical treatment, ₹10,000/- on conveyance and ₹ 10,000/- on special diet. The Claimant deposed that but for the permanent disability suffered by him, he would have earned much more and his income would have doubled with the passage of time.

7. The Claims Tribunal found that the Claimant had produced bills in respect of his medicines and treatment for about ₹12,000/-, the Claims Tribunal, therefore, awarded a sum of ₹20,000/- for the same. The Claims Tribunal believed the Claimant's version regarding his expenditure on special diet and conveyance and awarded a sum of ₹10,000/- each under these heads. It further awarded a sum of ₹50,000/- each towards pain and suffering and loss of amenities. Apart from a sum of ₹ 98,985/- and ₹ 2,96,956/- towards loss of future earning capacity; a sum of ₹ 50,000/- was also awarded towards future treatment.
8. The contention raised on behalf of the Claimant is that his income should not have been taken as per minimum wages of a semi-skilled worker. Some provision towards inflation ought to have been made while awarding compensation towards loss of earning capacity. It is contended that compensation awarded towards pain and suffering and loss of amenities is too meager and that compensation for disfigurement and for artificial limb was not granted.

9. On the other hand, on behalf of the Insurance Company, it is contended that with an amputation of the right leg below knee, the loss of earning capacity for a tailor should not have been taken to be 60%, at the most it could result in loss of earning capacity to the extent of 15-20%.
10. Section 168 of the Motor Vehicles Act (the Act) envisages grant of just and fair compensation to a victim of a motor accident.
11. In *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors*, (1994) 2 SCC 176, the Supreme Court observed that 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. At the same time, misplaced sympathy, generosity and benevolence cannot be the guiding factor for determining the compensation. The object of providing compensation is to place the claimant(s), to the extent possible, in almost the same financial position, as they were in, before the accident and not to make a fortune out of the misfortune that has befallen them.
12. The Claimant sought to prove that he was working as a tailor and was earning ₹ 10,000/- per month as an employee with

Nirmal Textiles Building. The Claimant was cross-examined at length with respect to his employment with Nirmal Textiles Building. He did not file any proof of his salary or any proof of his employment with Nirmal Textiles. The Claims Tribunal, therefore, rightly disbelieved the Claimant's income to be ₹10,000/-.

13. At the same time, it is important to note that the Claimant's testimony that he was working as a tailor was not challenged in the cross-examination. In the year 2006, it would be reasonable to assume that a tailor must be earning over ₹ 150/- per day. The minimum wages of a skilled worker on the date of the accident were ₹ 3736/- per month. Thus, I would venture to make a guess work and hold the Claimant's income to be about ₹ 4500/- per month. In the absence of any evidence with regard to the future prospects, I would not make any addition while awarding compensation for loss of earning capacity.
14. In *Raj Kumar v. Ajay Kumar & Anr.*, 2011 (1) SCC 343 the Supreme Court dealt with in detail the effect of permanent disability on the earning capacity of the injured. 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.”

15. Thus, the same disability may have different impact on the earning capacity of an injured following a different vocation. The Claimant here was working as a tailor. It is not his case that he is totally incapacitated to work as a tailor because of the injuries suffered by him. It cannot be lost sight that now most of the tailors work with an electric sewing machine.
16. Unfortunately, no evidence has been led by the Claimant as to how his earning capacity has been affected. The Claims Tribunal made a guess work and accepted 60% disability in respect of his right lower limb to compute his loss of his earning capacity. I am not inclined to follow the same. Some attempt ought to have been made by the Claims Tribunal to at least go into the nature of work undertaken by a tailor. For a long time, a tailor has to remain standing for cutting the cloth. With an artificial limb it would be difficult to stand for such a long duration. The Claimant would have difficulty in picking up various things needed for discharging his duties as a tailor. I would, therefore, hold that there was a loss of earning capacity to the extent of 30%.
17. The Claimant was aged about 35 years on the date of the accident. The compensation payable under the head of loss of earning capacity would come to ₹ 2,59,200/- (4500/- x 12 x 16 x 30%).

18. While awarding the compensation under non-pecuniary heads, an attempt has to be made to award similar compensation, of course, after adjusting the inflation.
19. In *Govind Yadav v. The New India Insurance Co. Ltd.* (2011)10 SCC 683, the accident occurred in the year 2004. The injured Govind Yadav was a bachelor and was aged 24 years on the date of the accident. The Hon'ble Supreme Court granted a sum of ₹ 1,50,000/- towards pain and suffering and another sum of ₹ 1,50,000/- towards loss of amenities in life and loss of marriage prospects.
20. No compensation is claimed in this case on account of loss of marriage prospects as the Claimant must be married. Here the accident took place in the year 2006, thus in the facts and circumstances of the case, I would award a sum of ₹1,50,000/- towards pain and suffering and ₹1,00,000/- towards loss of amenities in life and disfigurement.
21. The Claims Tribunal awarded a sum of ₹ 50,000/- towards future treatment. A grievance is made by the Insurance Company that there was no evidence with regard to the future treatment. I would agree with the learned counsel for the Insurance Company that no evidence was led that the Claimant needed any future treatment. At the same time, the Claimant proved receipt Ex.PW-1/32 for making an advance payment of ₹ 875/- for the purchase of an artificial foot S-2 25 cm right leg

though the total cost of the artificial limb has not been given. As the life of the Claimant would be easier with an artificial limb, seeing his interest, I would award him a sum of ₹ 50,000/- which was awarded by the Claims Tribunal towards future treatment as the cost for the purchase of an artificial limb. The overall compensation is recomputed as under:-

Sl. No.	Compensation under various heads	Awarded by this Court
1.	Loss of Earning Capacity	2,59,200/-
2.	Pain and Suffering	₹1,50,000/-
3.	Loss of Amenities and Disfigurement	₹ 1,00,000/-
4.	Future Treatment / Cost for Artificial Limb.	₹ 50,000/-
5.	Special diet (as awarded by the Claims Tribunal)	₹ 10,000/-
6.	Conveyance (as awarded by the Claims Tribunal)	₹ 10,000/-
7.	For Medicines (as awarded by the Claims Tribunal)	₹ 20,000/-
	Total	₹ 5,99,200/-

22. Since a compensation of ₹ 5,88,942/- has been awarded by the Claims Tribunal, it cannot be said that the same is not just and fair. In the circumstances, I would not like to interfere with the award made by the Claims Tribunal.

23. Both the Appeals are accordingly dismissed.

24. No costs.

25. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

MARCH 30, 2012

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