

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

Reserved on: 1st February, 2012

Pronounced on: 21st February, 2012

+ **MAC. APP. No.845/2010**

UNITED INDIA INSURANCE CO. LTD.

..... Appellant

Through: Mr. Vineet Malhotra with
Mr. Rohan Sharma, Advocates

Versus

VALSAMA JOSEPH RAJAN & ORS.

..... Respondents

Through: Mr. O.P. Mannie, Advocate for
the Respondents /Claimants

WITH

+ **MAC. APP. No.132/2012**

VALSAMA JOSEPH RAJAN & ORS.

..... Appellants

Through Mr. O.P. Mannie, Advocate

Versus

UNITED INDIA INSURANCE CO. LTD.

..... Respondent

Through: Mr. Vineet Malhotra with
Mr. Rohan Sharma, Advocates

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. These are two Cross-Appeals arising out of a judgment dated 21.08.2010 passed by the Motor Accident Claims Tribunal whereby a claim petition under Section 166 filed by the First Respondent in MAC APP No.845/2010 was allowed and she was awarded a compensation of ₹12,51,357/- for having suffered injuries in a motor accident which took place on 20.01.2004.
2. MAC APP No.845/2010 has been preferred by the Appellant United India Insurance Co. Ltd. for reduction of compensation on the ground that the compensation awarded is exorbitant and excessive. The Cross-Objections registered as MAC APP. No.132/2012 are preferred by the First Respondent where the First Respondent says that the compensation awarded is not just and proper as she has not been compensated for the loss of amenities in life and for mental pain and suffering for not bearing a child in future.
3. For the sake of convenience, the Appellant United India Insurance Co. Ltd. shall be referred to as the “insurer” and the First Respondent who suffered injuries in the accident shall be referred to as the “Claimant”.
4. The finding of fact on proof of negligence has not been challenged by the insurer. I am, therefore, not expected to go into this question.

5. The Claimant at the time of the accident was aged 34 years and was working as an Accounts Officer with M/s. S.A. Packaging Pvt. Ltd. and was getting a salary of ₹ 9000/- per month. Immediately after the accident, the Claimant was removed to Moolchand Khairati Ram Hospital. After first aid, she was shifted to Bhardwaj Hospital where she remained admitted from 20.01.2004 to 28.01.2004. The Claimant was then admitted in Indraprastha Apollo Hospital on 22.06.2004 and was discharged from there on 25.06.2004. She suffered fractures of right clavicle, left humerus, ribs and pelvis. The disability certificate Ex.PY issued by All India Institute of Medical Sciences (AIIMS) shows that she suffered 60% permanent physical impairment in relation to her body. The certificate is extracted hereunder:

“Reported date of injury: 20/1/2004

First treatment and MLC registered at : Moolchand Hospital

Other Hospitals where treated reportedly: Apollo Clinic,

Vasant Kunj:

Bhardwaj Hospital,

Noida

Whether treated at AIIMS: No

If treated at AIIMS, which department(s) : No

This is to certify that Valsamma Joseph, wife of Shri Rajan P.K., 34 years old female, PMR OPD No. 10660/2006 is a case of “Post traumatic fractures of right clavicle, left humerus, ribs and pelvis”. She is physically handicapped and has 60% (Sixty) permanent physical impairment in relation to her all four limbs and trunk.

Note: This condition is not likely to change. Reassessment is not recommended.”

6. The Appellant was unable to join her duty for a period of six months. She was awarded the compensation under various heads, which is extracted hereunder:

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Loss of Income	₹54,000/-
2.	Loss of Future Income	₹ 10,36,800/-
2.	Medical Expenses	₹ 95,557/-
3.	Pain & Suffering	₹ 50,000/-
4.	Conveyance	₹ 10,000/-
5.	Special Diet	₹ 5,000/-
	TOTAL	₹ 12,51,357/-

7. The following contentions are raised on behalf of the Insurer:
- The certificate Ex.PW1/105 reflects that the Claimant resumed her duty on 05.07.2004 i.e. within six months of the accident, therefore, no loss of future income should have been granted.
 - The Claimant by the initial certificate issued by the Doctor was advised rest for three months. She could not

have been awarded compensation for loss of pay for six months.

iii) The Claimant did not lead any evidence that she did not receive any salary during the period she took leave.

8. Per contra, it is urged by the learned counsel for the Claimant that the Claimant could not join her duties as she wanted to rehabilitate herself. She was unable to take the load and, therefore, had to resign. Thus, it is contended that the Claims Tribunal finding on granting loss of future income cannot be faulted. It is contended that no compensation has been awarded towards amenities in life and for pain and mental agony in not bearing a child in future.
9. Section 168 of the Act enjoins the Tribunal to make an award determining the amount of compensation which appears to be just. However, the objective factors, which may constitute the basis of compensation appearing as just, have not been indicated in the Act. Thus, the expression “which appears to just” vests a wide discretion in the Tribunal in the matter of determination of compensation. Nevertheless, the wide amplitude of such power does not empower the Tribunal to determine the compensation arbitrarily, or to ignore settled principles relating to determination of compensation. Similarly, although the Act is a beneficial legislation, it can neither be allowed to be used as a source of profit, nor as a windfall to the persons, affected nor should it be punitive to the

person(s) liable to pay compensation. The determination of compensation must be based on certain data, establishing reasonable nexus between the loss incurred by the dependents of the deceased and the compensation to be awarded to them. In nutshell, the amount of compensation determination to be payable to the claimant(s) has to be fair and reasonable by accepted legal standards.

10. 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, a 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 misfortune that has befallen them.
11. On the basis of the Claimant’s testimony as PW1 and the documentary evidence including the disability shows that she suffered following injuries:

“ *Fracture Clavicle (Right)*
 – *B/L Multiple fracture ribs*
 – *Fracture left humerus- Treated with ORIF with Bone Grafting*
 – *Fracture left radial head- Excision done*
 – *Fracture Pelvis B/L*
 – *Loss of Upper one incisor tooth*
 – *Multiple abrasions and blunt injuries all over body.”*

12. The Claimant’s testimony on the extent of injuries was not challenged in cross-examination. The disability certificate Ex.PY was proved by Dr. S.L. Yadav. He testified that the Claimant suffered 60% permanent physical impairment of four limbs and trunks. She was issued a certificate Ex.PW1/105 by Dr. Manoj Sharma, Consultant and Orthopaedician, which is extracted hereunder:

“TO WHOM IT MAY CONCERN

This is to state that Mrs.Valsamma, 30 years/F was admitted to Bhardwaj Hospital under my care as a case of Multiple fractures(Fracture clavicle with left humerus (arm) with multiple rib fractures B/L with fracture (L) radial head with fracture Pelvis with loss of upper incisor tooth) on 20/01/04. She had a poor general condition (BP: 80mmHg,Pulse:134/min. and gasping state) when she was revived by I.U.Fluids, haemocoel and blood transfusion, a chest tube was inserted. Later when her condition settled and her life was out of danger. She was taken up for surgery and excision head radius with ORIF humerous (L) was done under G.A. on 24/01/04. She was put on Physiotherapy and complete bed rest for 3 months. But when she was ambulated she had pain pelvic area and sciatic neuritis. She was further advised rest and conservative treatment. Her humerus went into non union for which she was reoperated at Indraprashtha Apollo Hospital and reosteosynthesis with bone grafting (L) humerus

was done on 23/06/04. The patient and her husband have been explained well about the after effects to the healed fracture pelvis and ribs that her chest capacity will become lesser, chances of pain later and chest infection, inability for strenuous work, long travel by sitting and pregnancy. Also loss of full power/strength and mild pain on heavy work in (L) elbow due to excised radical head. She has been allowed to join duty (but only light ones) since 05/07/04 and keep the (L) arm in a Broad arm sling, not to lift any heavy weight and minimally use it for Computer operation for at least three more months.

Sd/-

*Dr. Manoj Sharma,
Consultant and Orthopaedician”*

13. The Claimant's testimony as PW1 that she could not cope up with the work and hence had to leave the job was not challenged in the cross-examination.
14. It is urged by the learned counsel for the insurer that the Claimant should have examined some Gynecologist to prove that she would not be able to bear a child in future.
15. It is nowhere stated in the certificate Ex.PW1/105 that the Claimant cannot bear a child. What was stated was that because of healed fracture of pelvis and ribs, her chest capacity will become lesser. There may be chances of pain later, chest infection, inability to do strenuous work, long travel by sitting (difficulty in pregnancy). Admittedly, no Gynecologist has been produced and as stated earlier, the certificate Ex.PW1/105 shows that she will have the difficulty in pregnancy because of fracture of the pelvis (bone). Thus, what can be inferred is that the Claimant, if she wanted to bear a child, would be in

constant fear of the difficulties during the pregnancy and the delivery.

16. The Certificate Ex.PW1/105 clearly shows that she was permitted to join for light work only w.e.f. 05.07.2004. She was asked to keep the left arm in a broad arm sling, not to lift any heavy weight and minimally use it for computer operation for at least three more months. It is well-settled that to award compensation for loss of earning capacity, the Claimant must prove that the disability suffered by her had practically affected his/her earning capacity. (*Raj Kumar v. Ajay Kumar & Anr.*, 2011(1) SCC 343).
17. It is true that the Claimant was employed as an Accounts Officer and was not expected to perform any physical work. She was permitted to start light duty by the Certificate Ex.PW1/105. It is also true that her testimony that she could not cope up with the work was not challenged in the cross-examination. Taking totality of circumstances into consideration, I am of the view that in the absence of any expert evidence, she could not have been awarded a compensation to the extent of 60% on account of loss of earning capacity. At the same time, considering the nature of injuries suffered by her coupled with the fact that she would have difficulty and would be under constant stress if she decided to have a child, some compensation ought to have been awarded. I would reduce the loss of earning capacity from 60%, though given in the disability certificate Ex.PY, to 40%.

Moreover, the liability towards Income Tax was not taken into consideration while determining the loss of future earning capacity. Thus, the loss of future income comes to ₹6,23,360/- (9000 X 12=1,08,000 – 10,600 (Income Tax) X 16 X 40%).

18. The accident took place on 20.01.2004 and by certificate Ex. PW-1/1065 the Claimant was allowed to join light duty w.e.f. 05.07.2004. Though there is no evidence that the Claimant was paid salary for the leave but in any case she was entitled to be compensated for the loss of leave. Thus the Tribunal's finding awarding six months salary for loss of income cannot be faulted.
19. The compensation is recomputed as under:

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Loss of Income(for six months @ ₹9000/- X 6)	₹54,000/-	₹ 54,000/-
2.	Loss of Future Income	₹ 10,36,800/-	₹6,23,360/-
2.	Medical Expenses	₹ 95,557/-	₹ 95,557/-
3.	Pain & Suffering	₹ 50,000/-	₹ 50,000/-
4.	Conveyance	₹ 10,000/-	₹ 10,000/-
5.	Special Diet	₹ 5,000/-	₹ 5,000/-
6.	Loss of Amenities, including difficulty in bearing child	Nil	₹ 1,50,000/-

	Total	₹ 12,51,357/-	₹ 9,87,917/-
--	--------------	----------------------	---------------------

20. The overall compensation is reduced from ₹ 12,51,357/- to ₹ 9,87,917/-
21. The interest granted by the Claims Tribunal @ 7.5% per annum is maintained. The amount of ₹ 9,87,917/- along with proportionate interest shall be released and held in Fixed Deposit in terms of para 17 of the impugned order passed by the Claims Tribunal. The amount required to be deposited for various period in terms of the Claims Tribunal order would be held in Fixed Deposit in UCO Bank, Delhi High Court Branch.
22. The excess amount of ₹2,63,440/- along with interest, if any, accrued during the pendency of the Appeal shall be returned to the Appellant Insurance Company.
23. MAC APP No.845/2010 and MAC APP No.132/2012 are allowed in above terms.
24. The statutory amount, if any, deposited by the Appellant Insurance Company shall be returned.

(G.P. MITTAL)
JUDGE

FEBRUARY 21, 2012
pst