

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

Reserved on: 9th April, 2012
Pronounced on: 11th April, 2012

+ **MAC. APP. 899/2010**

NEW INDIA ASSURANCE CO. LTD.

..... Appellant

Through: Ms.Gunjan Chowksey, Advocate
proxy counsel for Mr.Kanwal
Chowdhary, Advocate

Versus

SHASHI GOYAL

..... Respondent

Through: Mr. S.N. Parashar, Advocate

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appellant New India Assurance Co. Ltd. impugns a judgment dated 12.11.2010 passed by the Motor Accident Claims Tribunal(Claims Tribunal) whereby a compensation of ₹9,25,020/- was awarded to the First Respondent for having suffered amputation of the left leg below knee in an accident which occurred on 04.10.2008.
2. It was proved on record that the First Respondent was hospitalized for about three months. She was engaged in giving home tuition to the science students of 10+2 at their respective

homes. She had an income of ₹1,26,492/- which included an income of ₹23,892/- from house property and ₹1,02,600/- from tuitions as per the Income Tax Return Ex.PW1/10 for the Assessment Year 2008-09 filed on 31.07.2008 (three months before the accident).

3. The Claims Tribunal calculated the loss of earning capacity at 70% and awarded the compensation, which is tabulated hereunder:

S.No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Loss of Future Income	₹7,90,020/-
2.	Medical Treatment	₹30,000/-
3.	Conveyance Expenses	₹10,000/-
4.	Pain and Suffering	₹80,000/-
5.	Special Diet	₹15,000/-
	Total	₹9,25,020/-

4. The contentions raised on behalf of the Appellant Insurance Company are:

- i) The loss of earning capacity taken as 70% is excessive as the disability of 70% was only in relation to the left lower limb (on account of amputation).

ii) The award of ₹80,000/- towards pain and suffering is on the higher side.

5. On the other hand, it is urged by the learned counsel for the First Respondent that she (the First Respondent) was incapacitated to visit the homes of the students and was thus totally incapacitated to impart tuitions. The Claims Tribunal was justified in taking 70% as the loss of earning capacity. It is urged that the compensation awarded towards pain and suffering amounting to ₹80,000/- was very less considering the pain suffered by the Claimant during her hospitalization for a period of three months and thereafter doing recovery at home.
6. No Cross-Objections or Cross-Appeal has been filed by the First Respondent. Yet, as per Order XLI Rule 22, the Respondent is entitled without filing any Cross Appeal not only to support the decree but can also urge that the finding against him by the Court below in respect of any issue ought to have been in his/her favour. Thus, the Respondent is entitled to support an award of compensation of ₹9,25,020/- even if it is held that loss of earning capacity granted was on the higher side, if the Respondent is able to show that the compensation awarded under other heads was inadequate. I am fortified in this view by a report of the Supreme Court in *Ravinder Kumar Sharma v. State of Assam & Ors.*, AIR 1999 SC 3571.
7. First of all, I would deal with the question of awarding compensation on account of loss of earning capacity.

8. 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.

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 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."

9. Thus, the same disability may have a different impact on the earning capacity of an injured following a different vocation. The First Respondent's testimony that she was taking tuitions at residence of different students was not challenged. But, at the same time, she could carry out the same work from her home. Of course, the number of potential students may decrease, the amount of fee payable for each class may also get reduced when a student comes to the residence of the tutor. In the

circumstances of the case, 70% loss of earning capacity taken by the Claims Tribunal was on the higher side. In my view, the loss of earning capacity would be about 35% and the loss of future income would come to ₹1,02,600/- X 35% X 11= ₹3,95,010/-

10. It is difficult to measure in terms of money the pain and suffering which is suffered by an injured on account of the serious injuries caused to him in a motor accident. Since the compensation is required to be paid for pain and suffering an attempt must be made to award compensation which may have some objective relation with the pain and suffering underwent by the victim of a motor accident. For this purpose, the Claims Tribunal and the Courts normally consider the nature of injury; the parts of the body where the injuries were sustained; surgeries (if any) underwent by the victim; confinement in the hospital and the duration of the treatment.
11. In the matter 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. In this case, the amputation is below the knee and the First Respondent was aged 51 years on the date of the accident. In the circumstances, an award of a sum of ₹80,000/- towards pain and suffering

cannot be said to be exorbitant or excessive. I, therefore, maintain the same. No compensation was awarded by the Claims Tribunal towards loss of amenities in life. Considering that this accident took place in the year 2008 as against the case of *Govind Yadav*(supra) where the accident occurred in 2004 and further taking into account the age of the First Respondent (the injured), in my view she is entitled to compensation of ₹1,25,000/- towards loss of amenities in life.

12. The First Respondent remained confined to Hospital for about three months. In her affidavit, she testified that she had been unable to pursue her vocation for a significant period. The total period, however, was not given. As stated above, the First Respondent remained admitted in the Hospital for a period of about three months. She would have taken at least another three months to recover from the injury so as to be able to carry out her vocation. Therefore, she was entitled to a compensation for the loss of income for a period of six months amounting to $\text{₹}1,02,600/- \div 2 = 51,300/-$
13. The First Respondent proved document Ex.PW1/16 giving an estimate of a good quality Left Trans Tibial Prosthesis to be ₹1,07,688/-. The price of this Prosthesis was not disputed. A suggestion was given that she did not require any artificial limb. A person suffering the amputation of one of the lower limbs would be happier to use an artificial limb than the crutches to walk on. Since no evidence was produced to contradict the estimate of ₹1,07,688/- towards the cost of a Prosthesis, I would

award the said sum towards the cost of the purchase of an artificial limb.

14. The overall compensation is recomputed as under:

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Loss of Future Income	₹7,90,020/-	₹3,95,010/-
2.	Pain and Suffering	₹80,000/-	₹80,000/-
3.	Loss of Amenities in Life	-	₹1,25,000/-
4.	Loss of Income	-	₹51,300/-
5.	Purchase of an Artificial Limb (Prosthesis)	-	₹1,07,688/-
6.	Medical Treatment	₹30,000/-	₹30,000/-
7.	Conveyance Expenses	₹10,000/-	₹10,000/-
8.	Special Diet	₹15,000/-	₹15,000/-
	Total	₹9,25,020/-	₹8,13,998/-

15. The compensation is thus reduced from ₹9,25,020/- to ₹8,13,998/-.

16. The compensation shall be released/held in a Fixed Deposit in UCO Bank, Delhi High Court Branch in terms of para 16 of the impugned award.
17. The Appeal is allowed in above terms.
18. The statutory amount shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

APRIL 11, 2012

pst