

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

+ MAC.A. 156/2012

% Judgment reserved on: 31st January, 2013
Judgment delivered on: 8th February, 2013

NEW INDIA ASSURANCE CO. LTD. Appellant
Through: Mr. A.K. Kaul, Adv.
versus

RINKU KUMAR & ORS. Respondents
Through: Mr. Rajesh Ranjan,
Adv. for R1.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. The instant appeal is directed against the award dated 08.12.2011 whereby the ld. Tribunal has granted compensation with interest @ 7.5% p.a. as under:-

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| “1. | Compensation towards pain and sufferings | Rs.70,000/- |
| 2. | Compensation towards loss of amenities, enjoyment | Rs.70,000/- |
| 3. | Compensation towards disfiguration | Rs.70,000/- |
| 4. | Loss of earning capacity due to injuries | Rs.2,06,712/- |
| 5. | Loss of earning of petitioner for four months | Rs. 13,200/- |
| 6. | Expenses towards medical bills | Rs. 6,977/- |
| 7. | Compensation towards conveyance and special Diet (without bills) | Rs.10,000/- |

Therefore, in my opinion the petitioner is entitled to Rs.4,46,998/- (rounded off to Rs.4,46,900/-) which shall be the just compensation to petitioner”.

2. The appellant is aggrieved by the impugned award on the ground that Id. Tribunal while taking the 29% disability into consideration has awarded Rs.2,06,712/- for loss of earning capacity due to injuries.

3. Dr. Jaswant Kumar appeared as PW-2 stated as under:-

“I am summoned witness. I was one of the member of Disability Board. I have brought the original disability certificate of Sh. Rinku Kumar. The same is Ex.PW-2/1, which bears my signature at Point ‘A’. The petitioner has suffered permanent disability of 58% in relation to right lower limb.

4. In cross-examination he deposed as under:-

“The petitioner Sh. Rinku Kumar was not treated / hospitalized in GTB Hospital at any point of time. Sh. Rinku Kumar had come in GTB Hospital / board only in the month of January, 2011. I cannot say as to whether the disability as found by the board is related to the accident occurred on 15.12.2006. Sh. Rinku Kumar was examined for the purpose of disability certificate and X-ray was done on 09.02.2011. The petitioner had suffered fracture of bilateral inferior public rami as appearing in the X-ray which resulted into the disability. I cannot tell as to when the petitioner suffered the said fracture of bilateral public rami. It takes about 6-12 months in healing of the injuries mentioned above. I cannot tell suffered by the petitioner in relation to whole body.”

5. Ld. Counsel for appellant has argued that above named Doctor has not specifically stated that disability of the injured was due to

accident in question. Therefore, the Id. Tribunal has wrongly assessed the disability of the injured as 29%.

6. Ld. Counsel for the appellant has not argued any other ground.

7. On perusal of the impugned award, it is established that respondent no. 1 / injured has deposed that as a result of the accident, he suffered injuries on his legs, hips and other parts of the body. He was taken to Mavi Hospital by the driver of the offending vehicle where his MLC was prepared. He was under treatment in the said Hospital for 3 days and on 08.01.2007 he was taken to the GTB Hospital. He was also treated in Triveni Hospital. It is further stated that due to the injuries suffered he was unable to work.

8. Dr. Jaswant Kumar, PW2 stated that he was one of the members of the Disability Board and had brought the disability certificate Ex.PW2/1, whereby he has established that the petitioner had suffered 58% permanent disability in relation to the right lower limb.

9. During cross-examination, the said PW2 stated that he could not tell as to whether the disability as found by the Board was related to the incident occurred on 15.12.2006. He further stated that respondent no. 1 / claimant was examined for the purpose of disability only on 09.02.2011. The injured had suffered fracture of bilateral inferior public rami which resulted into disability.

10. The injured / claimant stated during cross-examination that he remained in Mavi Hospital from 13.12.2006 to 16.12.2006 and voluntarily stated, the Hospital authority had asked for the money

which he could not pay till 16.12.2006. When he paid the amount, they prepared MLC showing the date as 16.12.2006.

11. Ld. Tribunal has come to the conclusion that MLC issued by Mavi Hospital shows that petitioner suffered accident on 15.12.2006, however, there is no evidence in rebuttal to the explanation given by the injured / claimant regarding the MLC bearing the date 16.12.2006.

12. Dr. Jaswant Kumar, PW2 certainly was not the Doctor of the MLC. Therefore, he rightly could not tell whether the said disability is because of the accident in question. It is also important to note that the appellant / Insurance Company could not bring in evidence that the claimant has suffered disability due to some other developments.

13. PW2 Doctor, being the member of the disability board was examined for the purpose of ascertaining the disability of the injured / claimant. Accordingly, the disability was ascertained and the disability certificate has been proved. Therefore, the disability certificate cannot be disbelieved.

14. In case of ***Raj Kumar v. Ajay Kumar (2011) ACJ 1*** the Apex Court has observed as under:

“Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability [sic disability] (this is also relevant for awarding compensation under the head loss of amenities of life). The second step is to ascertain his avocation, profession

and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue M.A.C. Petition No. 647/10 Page 4/7 to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60 per cent. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred per cent, 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 per cent as in the case of a driver or carpenter, nor 60 per cent 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 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 be 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 loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100 per cent (or even anything more than 50 percent),

the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation.”

15. Law is well settled as observed in a case of **Raj Kumar (Supra)** that the Tribunal has to first ascertain what activities the claimant could carry on in spite of the disability and what he could not do so as a result of permanent disability.

16. It has to be ascertained on the basis of avocation, profession and nature of work that has performed before the accident, and also the age. It has to be also ascertained whether the claimant after the accident is totally disabled from earning any kind of livelihood or the claimant could still effectively carry on the activities and functions, which he was earlier carrying on. Further it is to be ascertained whether he was prevented or restricted from discharging his previous activities and function, but could carry on some other or lesser scale of activities.

17. In the present case, the petitioner was working as helper-cum-cleaner, who has to be fit on all limbs of the body. However, he has suffered 58% permanent disability in relation to right lower limb.

18. Ld. Tribunal has rightly assessed 29% disability while calculating the loss of future earning capacity. In today's era, the employer needs healthy and hearty man and that is also on a very less salary, but if a person is suffering from some disability, firstly nobody

wants to give him any employment and if one gives, that will be on a very meagre salary.

19. In view of the discussion above and legal position, I find no discrepancy in the impugned award passed by the Id. Tribunal. Finding no merit in the instant appeal, same is dismissed with no order as to costs.

20. I note, vide order dated 13.02.2012, this Court directed the Appellant / Insurance Company to deposit award amount along with up-to-date interest with Registrar General of this Court who shall further release 60% of the amount along with proportionate interest in terms of the impugned order dated 08.12.2011 of the Id. Tribunal.

21. Pursuant to that, appellant / Insurance Company has deposited the entire awarded amount along with up-to-date interest accrued thereon with Registrar General of this Court and 60% of the amount has already been disbursed to the respondents / claimants.

22. Therefore, Registrar General of this Court is directed to release the balance amount in favour of the respondents / claimants with up-to-date interest accrued thereon in the same terms and conditions as enumerated in the award passed by the Id. Tribunal vide order dated 08.12.2011.

23. Further, the Registry of this Court is directed to release statutory amount of Rs.25,000/- in favour of the appellant.

CM. NO. 2589/2012 (Stay)

In view of the above, instant application has become infructuous and disposed of as such.

SURESH KAIT, J.

FEBRUARY 08, 2013

jg