

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

+ MAC. Appl. No. 197/2011

% Judgment reserved on: 10th January, 2013
Judgment delivered on: 15th January, 2013

UNITED INDIA INSURANCE CO. LTD Appellant

Through: Mr. Vineet Malhotra and
Mr. Vishal Gohri, Adv.

versus

AVTAR SINGH & ORS Respondents

Through: Mr. J.N. Aggarwal, Adv. for R3 &
R4.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the instant appeal appellant has challenged the award dated 13.12.2010 passed by the Id. Tribunal in case no. 478/2009.
2. The appellant has filed the present appeal on the ground that Id. Tribunal failed to appreciate the material available on record and erred in granting unjust and excessive compensation.
3. The Id. Tribunal failed to appreciate that respondent no. 1 / claimant did not suffer permanent disability of 80% of his whole body. The said Tribunal wrongly interpreted the opinion of the Medical Board and construed 80% disability of right lower limb to the 80% of the whole body.

4. Further ground as urged by the appellant is that Id. Tribunal failed to appreciate that respondent no. 1 is still able to do some job and can earn for his livelihood.

5. It is further stated that the Id. Tribunal erred in granting compensation of Rs.1 Lac towards loss of amenities of life and towards pain and suffering, the award is only based upon the presumption and assumption. Id. Tribunal did not compute the loss of income of respondent no. 1 / claimant and awarded an excessive amount on account of disability only.

6. Mr. Vineet Malhotra, Ld. Counsel appearing on behalf of the appellant submitted that when compensation is awarded by treating loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear.

7. Ld. Tribunal has gone contrary to the settled law as the same has been well settled in case of ***Raj Kumar vs. Ajay Kumar and Another 2011 1 SCC 343***. Counsel for the appellant has relied upon Para 15 and 19 of the same, which is reproduced as under:

15. It may be noted that when compensation is awarded by treating loss of future earning capacity as 100% (or even anything more than 50%), 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. Be that as it may.

19.(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of

loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).

8. It is further submitted that Id. Tribunal has awarded Rs.50,000/- for pain and suffering and Rs. 1 Lac for loss of amenities of life on the basis of 80% of the disability whereas in the Certificate issued by Doctor, he has specifically opined that “*patient has a case of post-traumatic above knee amputation right up to lower 1/3rd thigh with permanent disability of 80% in relations to right lower limb*”.

9. He submitted that said disability is not 80% of the whole body, however the same is only qua right lower limb of the respondent no.1 / claimant.

10. Ld. Counsel further submits that instead of 80% disability, Id. Tribunal should have considered the maximum 60% disability of the respondent no. 1 / claimant.

11. On perusal of the impugned award, it is revealed that Id. Tribunal on the issue of compensation on account of disability has recorded that respondent no. 1 / claimant was examined by the Medical Board who directly reported to the Id. Tribunal with opinion that respondent no. 1 / claimant had got disability to the extent of 80%.

12. Admittedly, the respondent no. 1 / claimant is a labour and if one leg of such person is amputated, he becomes almost incapable for the labour work.

13. No doubt, in the medical opinion, disability of the respondent no. 1 / claimant has been assessed to the extent of 80% and the same has been considered by the Id. Tribunal rightly for the reasons that even if a person having a fit body are not able to work properly, a person, who has become handicapped and not able to move without any support, definitely becomes incapable for the labour purposes.

14. The percentage of loss of earning capacity is applicable differently in different situations. However in the present case, the said formula is not applicable.

15. On the issue of pain and suffering, it is difficult to measure in terms of money value. In the instant case, respondent must have undergone severe pain, agony, mental shock for which there is no yardstick to assess non-pecuniary loss. The facts related to pain and suffering is related to the nature of injury of which body part is affected and duration of the treatment.

16. In ***Kavita v. Deepak & Ors., 2012 AIR SCW 4771*** the Apex Court for determining the compensation for pain and suffering while referring the judgment passed in case of ***Ward v. James (1965) 1 All ER 563*** and observed as under:

“When compensation is to be awarded for pain and suffering and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. The amount of compensation for non-pecuniary loss is not easy to determine but the award must reflect that different circumstances have been taken into consideration”

17. Respondent no. 1 / claimant had got crush injuries on the right thigh and also fracture femur extending through joints. Right leg of the respondent no. 1 / claimant had to be amputated consequent to the injuries. He remained in hospital for 91 days. Thus, the amount cannot be fixed for pain and suffering in all cases as it varies from case to case. Judicial notice can be taken on the fact that since the respondent no. 1 / claimant had got injuries / fracture as aforesaid, he might have suffered acute pain and suffering owing to the said injuries. He might have consumed heavy dose of anti-biotic etc. and also might have remained without movements of body for a considerable period of time.

18. In ***Raj Kumar v. Ajay Kumar (2011) 1 SCC 343***, the Apex Court observed as under:

“The provision of the motor Vehicles Act, 1988 ('the Act', for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.”

19. Therefore, if the Id. Tribunal has granted Rs.50,000/- for pain and suffering and Rs.1 Lac for loss of amenities of life, in my opinion, it is not excessive.

20. The respondent no. 1 / claimant was at the young age of 19 years when he met with an accident. He could not enjoy his young life in so many manners.

21. For the reasons, mentioned above, I find no merit in the instant appeal, therefore, same is dismissed.

22. Ld. Tribunal granted total compensation of Rs.8,59,795/- with interest @ 7.5% per annum including interim award. Out of the aforesaid amount 50% of the awarded amount has already been released in favour of the respondent no. 1 / claimant.

23. Registrar General of this Court is therefore directed to release the remaining amount to the respondent no. 1 / claimant as per the terms and conditions as enumerated in the award of the Id. Tribunal.

24. Registry is directed to release the statutory amount, if any, in favour of the appellant.

SURESH KAIT, J

JANUARY 15, 2013

Jg