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

% *Judgment delivered on: 7th August, 2013*

+ MAC.APP. 246/2011

UNITED INDIA INSURANCE CO LTD Appellant
Through: Mr. Sameer Nandwani, Adv.
versus

SHUSHIL KUMAR & ORS. Respondents
Through: Mr. Rajnish K. Jha, Adv.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Instant appeal has been preferred against the award dated 18.12.2010, whereby, ld. Tribunal has awarded compensation as under:

“1.	<i>Compensation for the expenses incurred on medical treatment.</i>	<i>Rs. 85,290/-</i>
2.	<i>Compensation for special diet, conveyance and attendant charges</i>	<i>Rs. 35,000/-</i>
3.	<i>Compensation for loss of income</i>	<i>Rs. 23,604/-</i>
4.	<i>Compensation for loss of earning capacity</i>	<i>Rs.3,82,384/-</i>
5.	<i>Compensation for pain and suffering</i>	<i>Rs. 50,000/-</i>
6.	<i>Compensation for loss of amenities of life</i>	<i>Rs. 50,000/-</i>
7.	<i>Compensation for physical disfigurement due to Permanent disability.</i>	<i>Rs. 40,000/-</i>
	<i>Total</i>	<i><u>Rs.6,66,278/-</u></i> ”

2. Ld. Counsel appearing on behalf of the appellant argued that Id. Tribunal has erred in awarding such a huge amount under the head of disfigurement as the injuries are only to the extent of 5% in relation to left leg. He submits that Id. Tribunal further erred in awarding exorbitant amount under the head of pain and sufferings. Also erred in awarding future prospects on minimum wages as there was no source of permanent income, therefore, future prospects could not have been awarded.

3. Further submitted that respondent no. 1 / injured received “*post-traumatic Scarring Left Leg*” and suffered permanent disability of 5%. He was working as a machine man. Keeping in view disability of 5%, Id. Tribunal has erred in awarding 30% which is on a very higher side.

4. On the other hand, Ld. Counsel appearing on behalf of the respondent / claimant submits that during arguments before the Id. Trial Court, the Counsel appearing on behalf of the appellant / Insurance Company did not dispute the disability certificate and submitted that same may be read in evidence. Accordingly, the claimant did not summon the Doctor to prove the disability certificate and the same has been admitted in evidence. Admittedly, as per the medical certificate Ex.PW2/5, claimant suffered permanent disability of 5% because of “*post-traumatic Scarring Left Leg*”.

5. In case of ***Oriental Insurance Co. Ltd. v. Rajender Kumar & Ors.*** reported in III 20p0p7 ACC 19, wherein it is held as under:

“When the injured a qualified stenographer suffered permanent disability resulting in 44% functional disability on left arm crushed under bus there was no infirmity found in the award recompensating loss of future earning due to disability suffered by injured as a result of accident, even though the petitioner had not suffered any cut in salary and was employed with the same employer. Also was held that if as a result of the accident, human anatomy is shattered or a limb is damaged, as far as possible, loss occasioned in terms of money to the victim of the unfortunate road mishap as to be recompensed. Damages have to be full and adequate. In case of personal injuries, the assessment of damages have to take into consideration the restriction of future earning capacity. The loss of chance of better employment or prospects have also to be examined and assessed. The impairment of the body as a whole has to be considered and its resultant impact on the earning or earning capacity as also future prospects in increasing the earning capacity have to be considered.

6. Ld. Tribunal has relied upon a case of **S.K. Kattimani v. Karnataka State Road Transport Corporation & Ors. 2007 ACJ 2279** wherein the Apex Court has held as under:

“After hearing learned counsel for the parties, we find that the High Court committed gross error in ignoring the fact that the claimant was a coolie doing manual labour for earning his livelihood. As a result of the accident his one arm was amputated which was almost total disability for earning. In such a situation, to reduce the quantum of compensation by treating disability at 50 percent was uncalled for. The tribunal has in fact assessed the disability of 80 per cent.

Consequently, we allow his appeal, set aside the order of the High Court and restore the award made by Motor Accidents Claims Tribunal.”

7. The case of the respondent / claimant is that he was working as a machine man and due to the injuries suffered by him the functional disability is 50% as he is not able to do any work properly as he was doing before the accident.

8. Keeping in view the “*post-traumatic Scarring Left Leg*”, Id. Tribunal had seen the injured personally in the court as he was not able to move easily. His one leg was not functioning properly. Therefore, Id. Tribunal has considered 30% functional disability for the loss of earning capacity.

9. In Rajkumar Vs. Ajay Kumar, the Apex Court in para6 and10 has held as under:-

“ Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability

to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accidents injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ('Disabilities Act' for short). But if any of the disabilities enumerated in Section [2\(i\)](#) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.”

10. *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 ability (this is also relevant for awarding compensation under the head of 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 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%. 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. It may be noted that when compensation is awarded by treating the 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.

10. In the instant case, injured/claimant was working as a Machine Man and he suffered post traumatic scarring left leg which caused 5% permanent physical disability in relation to left leg. Considering the nature of work performed by the injured, I hold that the learned Tribunal has rightly assessed the functional disability of 30%.

11. Keeping in view the injury sustained by the claimant, Id. Tribunal has granted compensation for a sum of Rs.50,000/- towards pain and suffering, Rs. 50,000/- towards loss of amenities of life and Rs. 40,000/- for physical disfigurement due to permanent disability.

12. On the issue of pain and suffering and loss of amenities of life, hon'ble Supreme Court in the case of **Ward Vs. James (1965) AII ER 563, Halburya Laws of England, 4th Edition, Volume 12** has 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."

13. Considering the judgments of Apex Court and injuries into view, these amounts are not on a higher side.

14. In view of the above, I do not find any discrepancy in the award passed by the Id. Tribunal.

15. Consequently, appeal is dismissed.

16. Statutory amount be released in favour of the appellant.

17. Balance deposited amount with interest be released in favour of the respondent no. 1/ injured on taking steps.

CM. NO 5490/2011 (Stay)

With the disposal of the appeal itself, this application has become *infructuous*. The same is disposed of accordingly.

SURESH KAIT, J

AUGUST 07, 2013

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