

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

+ MAC.A. 311/2012

% Judgment reserved on: 19th March, 2013
Judgment delivered on: 22nd April, 2013

UNITED INDIA INSURANCE CO LTD. Appellant
Through: Mr. Abhishek Kumar and Mr. Ram
Anugrah Pandey, Advs.

versus

PREM SAGAR & ORS. Respondents
Through: Mr. Vijay Wadhwa, Adv. for R1.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Instant appeal has been preferred against the impugned award dated 20.12.2011, whereby the appellant was held liable to pay the compensation amount in favour of the respondent no. 1 / claimant.

2. Ld. Counsel appearing on behalf of the appellant has argued on two grounds that ld. Tribunal failed to determine whether such permanent disability has affected or will affect the earning capacity of the respondent no.1, specifically where respondent no. 1 failed to prove his employment / job on or before the date of accident.

3. Another ground is that Id. Tribunal has not considered the age of the injured while awarding 50% towards future prospects which is completely against the dictum of *Sarla Verma v. DTC & Ors. (2009) 6 SCC 121* whereby held that the claimant is entitled only for 30% for the future prospects where the age of the injured / deceased is above 40 years.

4. Ld. Counsel appearing on behalf of the respondent / claimant submitted that he does not dispute the legal position on future prospects for the reasons that the Id. Tribunal has relied upon a case of *National Insurance Company Ltd. v. Kailash Devi II (2008) ACC 770* decided by this Court which has been reversed by the Coordinate Bench of this Court on 19.03.2012 in a case of *Dhaneshwari & Anr. v. Tejeshwar Singh & Ors. MAC.A. 997/2011*.

5. On the issue of compensation on account of disability, Id. Tribunal has recorded that petitioner got 44% disability as per disability certificate Ex.PW5/1. The said disability certificate was received directly by the Id. Tribunal from the hospital.

6. Respondent no. 1 / claimant had got permanent disability in relation to right lower limb. He was at the age of 43 years and working as a supervisor with some private establishment. Therefore, Id. Tribunal has considered his functional disability 44% and granted compensation amount.

7. On the issue of disability, Id. Tribunal has relied upon a case of ***Raj Kumar v. Ajai Kumar 2011 ACJ*** decided by the Hon'ble Supreme Court, wherein it is held as under:

“Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent percentage of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of the permanent 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) SCALE 298 and Yadava

Kumar v. DM., National Insurance Co. Ltd. – 2010 (8) SCALE 567)”

8. Counsel for the appellant has relied upon a case of **Raj Kumar** (*Supra*) wherein it is held as under:-

“ The Tribunal has proceeded on the basis that the permanent disability of the injured-claimant was 45% and the loss of his future earning capacity was also 45%. The Tribunal overlooked the fact that the disability certificate referred to 45% disability with reference to left lower limb and not in regard to the entire body. The said extent of permanent disability of the limb could not be considered to be the functional disability of the body nor could it be assumed to result in a corresponding extent of loss of earning capacity, as the disability would not have prevented him from carrying on his avocation as a cheese vendor, though it might impede in his smooth functioning. Normally, the absence of clear and sufficient evidence would have necessitated remand of the case for further evidence on this aspect. However, instead of remanding the matter for a finding on this issue, at this distance of time after nearly two decades, on the facts and circumstances, to do complete justice, we propose to assess the permanent functional disability of the body as 25% and the loss of future earning capacity as 20%. ”

9. Ld. Counsel appearing on behalf of the respondent no. 1 / claimant has orally prayed that attendant charges have not been granted by the Id. Tribunal. Though, they have not produced any evidence before the Id. Tribunal, however this Court has inherent power to grant compensation for the same.

10. He further submitted that an affidavit was filed before the Id. Tribunal that he had paid the attendant charges, however, he has not produced any proof thereof.

11. I have heard the learned counsel for the parties and perused the records.

12. Respondent met with an accident at the age of 43; and sustained injury which resulted into permanent disability of 44% in relation to right lower limb. Petition u/s 166 of Motor Vehicles Act, 1988 was filed and the award has been passed in favour of the respondent/claimant; and fastened the liability on the appellant insurance company. Appellant is aggrieved on the quantum of amount that has been assessed on account of loss of earning capacity.

13. It is pertinent to mention here that all injuries do not result in loss of earning capacity of the injured. The Apex Court in ***Raj Kumar vs Ajay Kumar 2011(1) SCC 343*** has prescribed the parameters to be followed in assessing the compensation in injury cases. In accordance with the principles, in injury cases, that the impact of the disability on the life of the injured is more important than the nature of the injury. However, considering the nature of injuries and degree of disability, that has been suffered by the respondent /claimant, the Id. tribunal has awarded compensation on account of loss of earning capacity.

14. In order to ascertain the loss of earning capacity of the injured person, the following factors are to be assessed:- (1) the age of the injured for ascertaining the multiplier, (2) annual income of the injured for ascertaining the multiplicand and finally the functional disability of the injured for assessing the actual loss.

15. Respondent/ claimant has pleaded and proved his age as 43 at the time of the accident, therefore, the Id. Tribunal has applied the multiplier factor as 14. In the absence of documentary evidence, the Id. tribunal has assessed the income of the claimant on the basis of minimum wages, one of the unit in the multiplicand. In addition to the wages, the claimant is also entitled for future prospects, which are ascertained on the basis of the age and nature of the employment, or job; as the case may be. The appellant has drawn the attention of this court regarding the age of the claimant, and submitted that the respondent claimant is entitled for future prospects at the rate of 30% whereas Id tribunal has awarded 50%. Importantly, the respondent/ claimant has agreed with the proposition advanced by the appellant. Accordingly, the respondent /claimant are entitled for 30 % future prospects.

16. In the process of assessing the compensation amount, the ascertainment of functional disability is to be done with great care and caution. The disability in relation to right lower limb has been assessed as 44% by the duly constituted medical board; and the member of the same has been examined as PW5 who deposed that there were no guidelines for disability in relation to whole body or to convert the limb disability into whole body disability. It is pertinent to note that, in the cross examination by the appellant, the member of the medical board could not comment upon the working capacity of the patient. Considering the facts and circumstances, the Id. tribunal has assessed the functional disability as 44%. I am of the considered opinion that

the mere assertion is not sufficient to reduce the assessment of functional disability. In the absence of evidence that the disability sustained has not affected the life of the injured in a substantial form, I am not inclined to interfere on the assessment of functional disability.

17. Accordingly, by applying 30% future prospects, the monthly income of the respondent would be Rs. 5,115 [Rs.3,934 + (Rs.3,934 x 30 %)]. resultantly, the compensation on account of loss of earning capacity comes to Rs 3,78,100 (Rs.5115x12x14x44%).

18. In view of above, the amount of compensation is modified as mentioned in the following chart.

Name of accounts	Amount awarded by the tribunal	Amount awarded by this court in appeal	Difference of amount
Treatment expenses	Rs. 51,026	Rs 51,026	0
Pain and sufferings	Rs. 25,000	Rs 25,000	0
Compensation for loss of income	Rs. 23,604	Rs 23,604	0
Conveyance and special diet	Rs. 5,000	Rs 5,000	0
Compensation on account of disability	Rs.4,36,202	Rs 3,78,100	Rs.58,102

19. Accordingly, I allow this appeal in part and reduce the compensation amount from Rs.5,90,832 to Rs 5,32,730.

20. Registrar general of this court is directed to release the reduced amount, i.e., Rs.58,102/- with accrued interest in favour of the appellant. The balance amount shall be released in favour of the respondent / claimant in terms of the award.

21. Instant appeal is partly allowed in the above terms.

22. No order as to costs.

SURESH KAIT, J

APRIL 22, 2013

Jg