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

% *Judgment delivered on: 1st August, 2013*

+ **MAC.APP. 889/2012 & CM No. 14051/2012**

NEW INDIA ASSURANCE CO LTD. Appellant

Through: Mr.J.P.N.Shahi, Advocate.

Versus

NITIN & ORS. Respondents

Through: Mr. Mandeep Bansal, Advocate for
Respondent No.1.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

MAC.APP. 889/2012

1. The present appeal is directed against the impugned award dated 07.05.2012, whereby the learned Tribunal has granted a total compensation of Rs.11,97,879/- in favour of the respondent No.1/claimant.

2. Brief facts of the case are that on 18.07.2006, the respondent No.1/claimant boarded on the offending bus No. DL-1PB-5472 from Singhu Boarder Bus Stand for reaching the destination, Narela, Delhi. As soon as

the said bus reached near the bus stand of Police Colony of Sector-5 at Ramdev Marg (Narela) at about 4.20 p.m., the driver who was driving the bus at a high speed, rashly and negligently; and suddenly applied the brakes. Due to sudden jerk, he fell down from the running bus and the left leg came under the front moving wheel of the bus. He sustained severe injuries in the left leg and other parts of the body. He was taken to Satyawadi Raja Harish Chander Hospital, Narela, from the place of accident and thereafter referred to Lok Nayak Hospital and admitted on 18.07.2006 for further treatment. He remained there till 11.08.2006. Resultantly, the left leg of the respondent/claimant below the knee was amputated and 80% disability has been assessed as per certificate Ex. PW1/3.

3. Learned counsel appearing on behalf of the appellant/Insurance Company has argued that he does not dispute the fact as regards the disability of 80% as assessed by the Medical Board. However, he contends that the learned Tribunal has wrongly considered 80% functional disability, whereas maximum it should have been 50% to 60%.

4. Secondly, the learned counsel has argued that the learned Tribunal has granted 50% towards future prospects whereas he was a daily wager; not a permanent employee. Therefore, he is not entitled for any amount on account of future prospects.

5. To strengthen his arguments, learned counsel for the appellant/Insurance Company has relied upon a case of ***Raj Kumar Vs. Ajay Kumar & Anr., (2011) 1 SCC 343***, wherein the Apex Court has observed as under:-

“12. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence:

- (i) whether the disablement is permanent or temporary;*
- (ii) if the disablement is permanent, whether it is permanent total
disablement or permanent partial disablement,*
- (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person.*

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

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16. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to 'hold an enquiry into the claim' for determining the 'just compensation'. The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the 'just compensation'. While dealing with personal injury cases, the Tribunal should preferably equip itself with a Medical Dictionary and a Handbook for evaluation of permanent physical impairment (for example the Manual for Evaluation of

Permanent Physical Impairment for Orthopaedic Surgeons, prepared by American Academy of Orthopaedic Surgeons or its Indian equivalent or other authorized texts) for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view the first schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen."

6. Thirdly, learned counsel has argued that the learned Tribunal has granted non-pecuniary damages on a very higher side as Rs.1,50,000/- each towards pain, sufferings and frustration etc. and loss of amenities. However, he is not disputing the quantum of Rs.20,000/- granted towards loss of marriage prospects.
7. He submitted that in view of **Raj Kumar (supra)**, compensation should be reasonable, and the Tribunals and the courts should not grant bonanza to the claims, which is ultimately loss to the exchequer.
8. Last but not the least, learned counsel for the appellant/Insurance Company has urged that the learned Tribunal has granted a sum of Rs.75,000/- towards counsel fee, which is not prescribed under the Act.
9. I have heard the learned counsel for the parties.
10. On the issue of counsel fee, learned counsel for the respondent No.1/claimant has submitted that in view of the dictum of **ICICI Lombard General Insurance Co. Ltd. Vs. Kanti Devi ILR (2012) VI Delhi 71**, of this Court, legal position is settled that Tribunals have no power to grant counsel's fee and other out of pocket expenses.

11. Therefore, on this issue, the impugned order qua the counsel fee is set aside.

12. It is important to note that the respondent No.1/claimant, aged 28 years, was working as a helper at the time of the accident. It took place in the year 2006 and the award has been passed in the year 2012. Since the date of the accident, he is staying with his married sister along with his old and ailing mother. His father was pre-deceased to him and he has no other source of income. Till date, he could not get any employment, despite his best efforts.

13. The fact remains that there is considerable unemployment and even healthy and heartiest persons are not able to get jobs easily, hence, it is very difficult to get any job for a handicap person, who is an illiterate. If, he had some technical qualification, the position would have been different. Therefore, considering the facts of the case, Id. Tribunal has rightly considered 80% functional disability.

14. I note, the learned Tribunal has considered the expected life of the respondent No.1/claimant for at least 50 years and opined that during this period, he will not be able to live like normal human being and enjoy the life. The prospects of marriage have considerably reduced, importantly, till date he could not get married. The learned Tribunal has granted Rs.1,50,000/- each towards pain, suffering and frustration etc. and loss of amenities and Rs.20,000/- towards loss of marriage prospects.

15. In view of the above, I am of the considered opinion that the quantum of compensation granted by the learned Tribunal towards loss of marriage

prospects is very lower side. However, as learned Tribunal has granted Rs.1,50,000/- towards loss of amenities, therefore, I am not inclined to enhance the loss of marriage prospects.

16. In view of the above discussion, I find no merit in the appeal and the same is dismissed.

17. Needless to state that the appellant/Insurance Company shall not pay the sum of Rs.75,000/-, as has been granted by the learned Tribunal towards counsel fee.

18. Pursuant to order dated 17.07.2012, the appellant/Insurance Company has deposited 50% of the awarded amount (less counsel's fee and out of pocket expenses) along with interest with UCO Bank, Delhi High Court Branch, out of which 25% has already been released in favour of the respondent No.1/claimant. Hence, the Branch Manager, UCO Bank, High Court of Delhi, New Delhi is directed to release the balance amount with interest accrued thereon in favour of the respondent No.1/claimant in terms of the award dated 07.05.2012 on taking necessary steps.

19. Consequently, the appellant/Insurance Company is directed to deposit the balance amount with up-to-date interest accrued thereon with the Registrar General of this Court within a period of six weeks from this order. On deposit, the Registrar General shall release the same in favour of the respondent No.1/claimant in terms of the award dated 07.05.2012 on his taking necessary steps.

20. The statutory amount shall be released in favour of the appellant/Insurance Company.

21. In view of the above, the instant appeal is disposed of.

CM No. 14051/2012

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

SURESH KAIT, J.

AUGUST 01, 2013

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