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

Date of Decision: 19.09.2014

+ MAC.APP. 211/2013

THE ORIENTAL INSURANCE COMPANY LIMITED..... Appellant

Through Mr.R.C.Mahajan, Advocate

versus

RAM LAL SAROJ & ORS. Respondents

Through Mr.K.K.Dubey, Advocate for R-1

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JUSTICE JAYANT NATH, J. (ORAL)

1. By the present appeal the appellant Insurance Company impugns the Award dated 02.01.2013.
2. The brief facts are that on 23.03.2006 the claimant/respondent No.1 was going for his duty and boarded a bus at Bahadurgarh to ISBT, Delhi. Thereafter at Nangloi Bus Stop another bus also reached there. The driver of both the buses started chasing each other. On the way an accident took place which is said to be on account of the rash and negligent driving of two buses. Both the buses are insured by the appellant Company.
3. Based on the evidence of parties the Tribunal awarded the following compensation to respondent no.1:-

Treatment expenses:	Rs.11,296/-
Pain and sufferings:	Rs. 25,000/-
Conveyance & special diet:	Rs.10,000/-
Compensation on account of Disability:	Rs.6,58,073/-
Loss of enjoyment of life &	

Amenities of life:	Rs.25,000/-
Compensation on account of loss of leave:	Rs.75,000/-
Total:	<u>Rs.8,04,368/-</u>

4. Learned counsel appearing for the appellant has assailed the Award only on one ground. He submits that respondent No.1 was working in a Government Company and on account of the accident he suffered no loss of income. He points out that as per the Award respondent No.1 suffered permanent disability of 46% in relation to left lower limb. The Tribunal assessed loss of earning capacity at 23% of the whole body. Based on the same and based on the salary on record the Tribunal has erroneously granted compensation for alleged loss of income of Rs.6,58,073/-. He submits that there are no bases or grounds to make this payment. He relies upon the judgment of the Supreme Court in the case of **Raj Kumar vs. Ajay Kumar & Anr., 2010(12)SCALE265** and a judgment of this court dated 14.03.2012 in MAC.APP.602/2011 titled **Oriental Insurance Company Ltd. vs. A.Mohan & Ors.**

5. Learned counsel appearing for the appellant relies upon a judgment which is mentioned in the Award of the Tribunal, namely, **United India Insurance Company Ltd. vs. Rama Swamy & Ors., MANU/DE/0140/2012**. On being requested for a copy of that judgment, he stated that he is not carrying the copy of the judgment though he wishes to cite it.

6. A perusal of the evidence on record shows that respondent No.1 in his evidence by way of affidavit has stated that he was a Head Cashier-cum-Clerk in Union Bank of India posted at Prashant Vihar Ext., Counter Azad Pur Branch, Delhi. He stated to be drawing a salary of Rs.19,596/-per

month. In his evidence by way of affidavit he does not in any way give details of the financial losses suffered by him except stating that he has suffered financial losses.

7. The evidence clearly shows that respondent No.1 was working in a nationalised bank. He continued to draw the same salary that he was receiving prior to his injury. There is no evidence led to show as to whether the injury/disability has any effect on the promotion of respondent No.1. It is unlikely that there was any impact on the promotion of respondent No.1.

8. The Supreme Court in the case of ***Raj Kumar vs. Ajay Kumar & Anr.*** (*supra*) in para 10 held as follows:-

“10. 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.”

9. Reference may be had to the judgment of the High Court in the case of ***Oriental Insurance Company Ltd. vs. A.Mohan & Ors.*** (*supra*). In that case the claimant was working in Hotel Maurya as a Room Attendant. The

Tribunal concluded on the evidence on record that the salary of the claimant was not affected or that he had suffered any other professional loss. Based on the same, on these facts this court had reversed the Award of Rs.3,09,972/- granted on account of loss of income (earning capacity) and awarded no amount for the same.

10. In the present case also respondent No.1 has led no evidence to show any loss of income on account of the disability suffered by him or any loss of income from his profession.

11. Accordingly in my view the Tribunal has failed to give any explanation for award of Rs.6,58,073/- based on his salary and loss of earning capacity at 23% towards the whole body.

12. However, I am inclined to award at least Rs.1,00,000/- as compensation on account of loss of income in the professional career for the simple reason that respondent No.1 was working as Head Cashier-cum-Clerk. Even after his retirement from the nationalised bank, he had a good chance of re-employment in some organisation and he could continue to earn. Hence I reduce the compensation under the head of “loss of earning capacity” on account of disability from Rs.6,58,073/- to Rs.1,00,000/-.

13. However, a perusal of the Award shows that the Tribunal has awarded Rs.25,000/- for pain & suffering, Rs.10,000/- for conveyance and special diet and Rs.25,000/- for loss of enjoyment and amenities of life. In my opinion, this compensation is on the lower side in the facts and circumstances of this case.

14. The evidence on record shows that respondent No.1 was admitted to Sanjay Gandhi Hospital on 23.03.2006 and discharged on 30.03.2006. Thereafter, it is stated that his condition deteriorated and he was again admitted in Sir Ganga Ram Hospital on 23.06.2006 and discharged on

12.07.2006. Hence, he has remained in hospital for nearly four weeks. His treatment as an outdoor patient continued for several months.

15. As per his disability certificate Ex.PW-2/5; he was operated upon for central fracture dislocation left hip and has a permanent disability of 46% in relation to left lower limb. The discharge summary from Sir Ganga Ram Hospital states that the patient was admitted with complaints of pain in left hip for one month and difficulty in walking for three months. It was noted that pain radiates down anterior aspect of thigh and increases on moving the hip.

16. I may also refer to the judgments of the Supreme Court in the case of *Kavita vs. Deepak and Ors., (2012) 8 SCC 604; V.Mekala vs. M.Malathi & Anr., 2014 ACJ 1441* and *Rekha Jain vs. National Insurance Company Limited* in Civil Appeal Nos.5370-5372 of 2013 dated August 01, 2013.

17. Keeping in view the nature of injuries suffered and pain undergone by respondent No. 1, in my opinion, the Tribunal has erred in granting Rs. 25,000/- for pain and suffering. I enhance the said amount to Rs.1,00,000/- for pain and sufferings. Similarly for loss of enjoyment and amenities of life, I enhance the compensation from Rs.25,000/- to Rs.1,00,000/-.

18. Coming to the fact that respondent No. 1 has a hip injury and permanent disability of 46% in relation to left lower limb, he would not be in a position to use public transport and would need to take private transport quite often. I hence enhance the compensation awarded for conveyance and special diet from Rs.10,000/- to Rs.1,00,000/-.

19. I have made changes in the compensation awarded even though there is no cross-appeal. In view of the judgment of the Supreme Court in the case of *Ranjana Prakash and Ors. vs. Divisional Manager and Anr. 2011 ACJ 2418*, this court would be entitled to look into any erroneous compensation

awarded to the claimants under different heads though cross objections have not been filed. The only bar is that the total compensation amount awarded by the Tribunal is not to be increased by this court in the absence of any cross-objections by the claimant. Relevant portion of the said judgment reads as follows:-

“6. We are of the view that High Court committed an error in ignoring the contention of the claimants. It is true that the claimants had not challenged the award of the Tribunal on the ground that the Tribunal had failed to take note of future prospects and add 30% to the annual income of the deceased. But the claimants were not aggrieved by Rs. 23,134/- being taken as the monthly income. There was therefore no need for them to challenge the award of the Tribunal. But where in an appeal filed by the owner/insurer, if the High Court proposes to reduce the compensation awarded by the Tribunal, the claimants can certainly defend the quantum of compensation awarded by the Tribunal, by pointing out other errors or omissions in the award, which if taken note of, would show that there was no need to reduce the amount awarded as compensation. Therefore, in an appeal by the owner/insurer, the Appellant can certainly put forth a contention that if 30% is to be deducted from the income for whatsoever reason, 30% should also be added towards future prospects, so that the compensation awarded is not reduced. The fact that claimants did not independently challenge the award will not therefore come in the way of their defending the compensation awarded, on other grounds. It would only mean that in an appeal by the owner/insurer, the claimants will not be entitled to seek enhancement of the compensation by urging any new ground, in the absence of any cross-appeal or cross-objections.”

20. In view of the above compensation payable to the claimants/respondent no.1 would now be as follows:-

Treatment expenses	Rs.11,296/-
Pain and suffering	Rs.1,00,000/-

Conveyance and special diet	Rs.1,00,000/-
Compensation on account of disability	Rs.1,00,000/-
Loss of enjoyment and amenities of life	Rs.1,00,000/-
Compensation on account of loss of leave	Rs.75,000/-
Total	Rs.4,86,296/-

21. As per the interim order of this court dated 05.03.2013 the appellant was directed to deposit the entire award amount with accumulated interest. 50% of the amount was to be released in favour of respondent No.1 and balance was to be kept in fixed deposit. Let the concerned Bank now release the payment as per the directions in this order with proportionate accumulated interest to respondent No.1. The balance amount with proportionate interest be refunded to the appellant.

22. The appeal stands disposed of.

JAYANT NATH, J

SEPTEMBER 19, 2014

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