

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

+ MAC APP. 399/2012

Judgement reserved on: 9th May, 2014

% Judgement pronounced on: 27th, May, 2014

RELIANCE GENERAL INSURANCE CO.LTD.

..... Appellant

Through: Mr.Pankaj Seth, Advocate.
versus

HARESH KUMAR @ HARISH KUMAR

AND ANR.

..... Respondents

Through: Mr.Navneet Goyal, Adv.
for R-1.

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. The present appeal has been filed by the insurance company for reduction in the compensation amount granted by the learned Tribunal vide its order dated 17th February, 2012. An amount of Rs.9,82,672/- along with 9 % per annum has been awarded to the respondent no.1, the injured.

2. The brief facts of this case are that on 3rd March, 2009 at about 6.30 a.m., respondent no.1 was travelling in vehicle no.DL

1L F-6261 which was being driven by its driver and besides him another helper Ravi Shankar was also present in the said vehicle and they were going from Loni to Okhla. As soon as they reached in front of petrol pump, Sarai Kale Khan, one Canter no.UP 16 S-9677 violating the traffic rules and being driven in a rash and negligent manner hit their vehicle. Their vehicle overturned and he suffered grievous injuries in the accident. He was first removed to AIIMS Trauma Centre from where he was shifted to Dr.Ram Manohar Lohia Hospital. He remained hospitalized at RML hospital from 3rd March, 2009 to 17th March, 2009 and suffered amputation of left arm below elbow. He was working as Helper, having an income of Rs.5000/- per month. His case was that he had lost his employment and suffered trauma and pain and his future prospects have also been adversely affected.

3. In this case, initially the AIR was filed by the IO who later on filed DAR and the petition under Section 166 read with Section 140 MV Act, 1988 was also filed and pursuant to the guidelines issued by this court in case titled Rajesh Tyagi vs. Jaivir, FAO No.842/2003 they were clubbed together.

4. The driver of the offending vehicle had not contested the case before the Tribunal.

5. After making enquiries into the matter and recording the evidence and considering the documents, the learned Tribunal has passed the award.

6. The appellant has assailed the said award on several grounds. It is contended by the appellant that the Tribunal has erred in returning the findings that the accident was caused due to rash and negligent driving of the offending vehicle and there was no evidence before the learned Tribunal to reach to this conclusion. The contentions of the appellant to this effect are contrary to the record. The injured Harish Kumar, respondent no.1 had examined himself before the Tribunal and has clearly deposed that *“a canter no. UP 16 S-9677 was driven by its driver at a very high speed rashly and negligently without taking necessary precautions, without proper look outs, violating the traffic rules and without blowing any horn came from behind and hit their Vikram Tempo no.DL-1F-6261with great force and Vikram Tempo was overturned. As a result of this violent impact I sustained grievous*

injuries.” There is no cross examination of this statement, thus the truthfulness of the statement is not disputed by the opposite parties. The injured, therefore has, by his uncontradicted testimony, clearly proved that the accident was a result of rash and negligent driving by the driver of the offending vehicle.

7. In this case, the Tribunal has awarded loss of income to the injured of eight months since it reached to the conclusion on the basis of the evidence that the injured was working as a helper on Vikram TSR. The injured has also placed on record documents and the medical treatment bills which clearly show that he was indisposed for about eight months and unable to perform his duties. The Tribunal, therefore has rightly awarded the compensation towards loss of eight months income.

8. The award of the Tribunal has been further assailed by the appellant on the ground that the learned Tribunal has erred in awarding 50% increase towards future prospects. It is argued that in terms of judgment of the Supreme Court in ***Sarla Verma vs. DTC 2009 (6) SCALE 129*** future prospects can only be granted in limited cases. This argument of learned counsel for the appellant

also has no merit in it. The formula laid down in *Sarla Verma's* case (supra) relates to the computation of the compensation in death cases.

9. The Supreme Court in the case of *Neerupam Mohan Mathur Vs. India Assurance Company (2013) 14 SCC 15* has held that the injured persons are entitled for future prospects if they have suffered disability and the learned Tribunal has correctly followed the principles laid down in the said case.

10. The learned Tribunal has also relied while granting the said relief on the findings of this court in *National Insurance Company Limited vs. Kailashdevi, II (2008) ACC 770*. Even in a recent judgment in *Sanjay Verma vs. Haryana Roadways 2014 ACJ 692* three judges of the Supreme Court has granted future prospects to an injured person. I find no fault in the order of the learned Tribunal on this aspect.

11. The next contention on behalf of the appellant is that the learned Tribunal has wrongly assessed the permanent disability as 65% in relation to his whole body while granting loss of future earnings. In the present case, from the report received from RML

hospital Ex.PW1/21 which is proved on record by PW2 Dr.H.Kataria, Professor ORthopedic, RML Hospital, it is apparent that the injured had suffered 65 % disability in relation to his upper limb. Doctor has opined that disability was of permanent nature and there was no likelihood of any improvement. The disability certificate was issued by the Disability Board and he himself was one of the members of the said board. There is no cross examination of this witness and, therefore, it stands proved that the injured had suffered 65% of disability in respect of left arm and there was amputation of one arm. The principles to be followed while calculating the loss of future income on account of permanent disability has been elaborately discussed by the Supreme Court in the case of ***Raj Kumar Vs. Ajay Kumar and Another*** [(2011) 1 SCC 343] wherein the court has held as follows:

“8. 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 accident 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 ("the 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.

9. *The percentage of permanent disability is expressed by the doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body cannot obviously exceed 100%.*

10. *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, the 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.

11. 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 the 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 SCC 254 : (2010) 3 SCC (Cri) 1258 : (2010) 10 Scale 298] and Yadava Kumar v. National Insurance Co. Ltd. [(2010) 10 SCC 341 : (2010) 3 SCC (Cri) 1285 : (2010) 8 Scale 567])

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.”

12. The learned Tribunal also after discussing the findings of the apex court, reached to the conclusion that since the injured was working as a Helper and since he had lost his one arm, his whole body disability is equal to his permanent disability of the specific limb. Due to his amputation he has become incapable for working as a helper. The Tribunal has thus correctly assessed the disability at 65% in case of this injured. I find no reason to disturb the findings of the learned Tribunal on this count.

There is no merit in the appeal, which is dismissed.

DEEPA SHARMA, J

MAY 27, 2014

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