

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

Reserved on : 15.07.2014

Pronounced on: 27.11.2014

+ **MAC.APP. 578/2011 and CM Appl.8701/2013**

RASHID RAHBAR Appellant
Through **Ms.Padmini Gupta, Advocate.**

versus

ORIENTAL INSURANCE CO LTD & ORS Respondents
Through **Mr.J.P.N.Shahi and Ms.Kirti Sethi,**
Advocates.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. Present appeal is filed by the appellant seeking enhancement of compensation. The brief facts which led to filing of the claim petition and thereafter the present appeal is that on 17.10.2007 the appellant was going with his brother on a motorcycle. In front of RTO Office before Police Post Okhla, Delhi, their motorcycle was hit by a truck said to be driven at a very fast speed in a rash and negligent manner. The motorcycle fell down and the appellant suffered grievous injuries. The offending vehicle crushed the left leg of the appellant which had to be amputated.
2. On compensation the Tribunal awarded the following compensation:-

Loss of income	Rs. 1,24,576/-
Loss of earning capacity due to disability	Rs.11,11,840.80
Medicines and medical treatment	Rs. 38,514/-

Future treatment/artificial limb	Rs. 2,45,250/-
Loss of academics	Nil
Pain and sufferings	Rs. 25,000/-
Loss of marriage prospects	Rs. 25,000/-
Conveyance, special diet and attendant	Rs. 30,000/-
Loss of amenities of life	Rs. 25,000/-
Physical disfigurement	Rs. 25,000/-
TOTAL COMPENSATION	Rs.16,50,180.80.

3. The Tribunal assessed the income of the appellant based on the appointment letter of HDFC Standard Life Insurance Co.Ltd.Ex.PW1/A1 which showed gross salary of Rs.15,572/- per month. It further assessed the functional disability of the appellant based on the disability certificate Ex.PW1/A which shows the functional disability of 70% in relation to left lower limb and the evidence of PW-1. Dr.Satish Kumar who assessed the functional disability at 48% in relation to the whole body. The Tribunal assessed the functional disability at 35%. Total compensation for loss of earning capacity due to disability was assessed at Rs.11,11,840/-.

4. Learned counsel appearing for the appellant impugns the Award under various heads. She submits that the functional disability of 35% had been wrongly assessed keeping into account the fact that the disability of the left lower limb was 70%. It is submitted that the functional disability should also have been assessed at 70%. It is also urged that relying upon section 163-A of the M.V.Act read with note 5 of schedule 2 compensation for loss of salary should have been awarded for at least 52 weeks and not for nine

months as awarded by the Tribunal. It is next urged that after having assessed the income of the appellant for the purpose of computing loss of earning capacity due to disability the assessed income has not been enhanced by future prospects considering that the age of the appellant on the date of the accident was 30 years.

5. It is next urged that while assessing the salary of the appellant, the Tribunal has not taken into account the provident fund and gratuity which was also receivable by the appellant as a component of the salary. It is urged that Rs.10,000/- would have been the amount under the heads which have been ignored and not added to the salary. It is next urged that the Tribunal has awarded Rs.1,43,250/- for an artificial limb and Rs.1,02,000/- for maintenance of the artificial limb for next 10 years. It is urged that after 10 years the appellant would require maintenance of the limb and hence the compensation on this account should be enhanced.

6. Learned counsel appearing for the respondents have strongly opposed the enhancement of compensation sought for. It is urged that functional disability of 35% assessed by the Tribunal is in order as there is no evidence on record to the contrary. Reference is made to the cross-examination of PW-1 who has said that the functional disability of the overall body would be 48%.

7. I will first deal with the issue of functional disability as assessed by the Tribunal. The appellant himself entered the witness box. In his affidavit by way of evidence he states the following regarding the effect of the accident on his career:-

“That I was 34 years of the age at the time of accident. I used to work as a Sales Development Manager with HDFC Standard Life Insurance Company Limited at Bhikaji Cama Place, New Delhi and was drawing a salary amount to RS.2,25,000/- per annum. My pay slip for the

month of August, 2007 is marked as PW-2/V and the photocopy of my I. Card, Pan Card, Election I. Card and Driving License are marked as Ex. PW-2/W to Ex. PW-2/Z.

That the said accident has jeopardized my entire career/future and I have been leading a miserable life of an unemployed since the date I met with the said accident. Apart from this my marriage prospects has also suffered a set back.”

8. In his cross-examination he states that his job is a field job and due to accident he is unable to perform his work efficiently. He admits that he has not been removed from service by the company till today. His cross-examination is carried out on 9.7.2009 whereas the accident took place on 17.10.2007.
9. Similarly, PW-1 Dr.Satish Kumar, Sr. Orthopedic Surgeon, RML Hospital, New Delhi has confirmed that the disability certificate was issued with 70% physical impairment in respect of left lower limb. In his cross-examination he states that disability of the whole body is about 48%.
10. Similarly, PW-5 Ms.Shewta Mishra, Manager, HR, HDFC Standard Life Insurance Co.Ltd. the employer of the appellant in her evidence states that the appellant was employed as a Sales Development Manager and his duties were field job. She also states that because of amputation he cannot be deployed for field duty but will be adjusted in the same salary in some other department. She also confirms that had the appellant not met with the accident, based on his performance he would have got incentives and progress and that he cannot be promoted in his line of employment.
11. The appellant has not given proper evidence to show the impact of the accident on his professional career. The affidavit by way of evidence is general in nature. It also cannot be ignored that the accident took place on 17.10.2007. The cross-examination took place on 9.7.2009. Hence, even

roughly 18 months after the accident he is still being employed by his employer HDFC Standard Life Insurance. PW-5 does mention about loss of incentives but no details are given. Accordingly, in my opinion, the Tribunal has rightly assessed the functional disability as 35%. There are no reasons to differ with the said finding in the Award.

12. I will now deal with the issue of loss of income which the appellant claims for 52 weeks. The Tribunal noted that though the appellant claims that he could not earn since the date of the accident but he has not placed on record any certificate of the doctor to substantiate his claim. The Tribunal noted that PW-5 had deposed that the appellant is on medical leave without pay. The Tribunal further noted that the appellant was appearing in Court regularly since 22.9.2008 and he has already purchased an artificial limb in May 2009. The Tribunal concluded that the appellant could have attended the office after purchase and adjustment of the artificial limb. However, the Tribunal held that on account of the injuries suffered and amputation of his left leg, the appellant could not have attended his work for 8 months and accordingly granted a compensation of Rs.1,24,576/- being loss of salary for eight months. In the light of the evidence on record there are no reasons to differ with the view taken by the Tribunal i.e. that the appellant could have joined duties after eight months.

13. The reliance of the appellant on section 163A of the M.V.Act is misplaced. This is a petition filed under section 166 of the M.V.Act. The provisions of 163A would only be a guiding factor. Further Clause 5 of Schedule (II) of section 163A of the Act provides that loss of income, if any, for the actual period of disablement not exceeding 52 weeks is to be paid for victims of non fatal accidents. It is for the appellant to prove that there was a loss of income for 52 weeks before compensation under the said provisions

can be awarded. In the present case, as already stated above, the appellant has failed to prove that there was a necessity to remain on leave for the period of 52 weeks as is being claimed by the appellant.

14. The next contention raised by the learned counsel for the appellant pertains to grant of future prospects for the purpose of computing loss of earning capacity. A perusal of the Award shows that the Tribunal has assessed the income based on the appointment letter showing income of Rs.15,572/- per month. The loss of earning capacity due to disability has been assessed based on this income. In view of the judgment of the Supreme Court in *V. Mekala vs. M. Malathi & Anr 2014 ACJ 1441* and *Rajesh & Ors. vs. Rajbir Singh & Ors., (2013) 9 SCC 54*, I enhance the assessed income by 50% on account of future prospects for calculation of loss of earning capacity due to disability.

15. Coming to the next issue raised by the learned counsel for the appellant regarding the addition of provident fund and gratuity being not added to the salary of the appellant. A perusal of the evidence of PW-1 and PW-5 shows that there is no attempt to elaborate or explain or prove these aspects of the salary. Ex.PW2/A2 the salary slip of October 2007 also does not mention any such composition. The salary shown in the salary slip is Rs.13,748/- and the Tribunal has already taken the salary at Rs.15,572/- which is on a higher side. In view of the nature of evidence led, there is no reason to differ with the view of the Tribunal for computing the income at Rs.15,572/-.

16. Hence, the loss of earning capacity due to disability amounts to Rs.16,67,761/- [(Rs.15,572/- + 50%) x 12 x 17 x 35%].

17. As far as the next submission is concerned, regarding maintenance of the artificial limb no evidence is pointed out to show as to why the

compensation awarded for Rs.2,45,250/- for the artificial limb and future maintenance is inadequate.

18. Coming to non pecuniary damages the Tribunal has awarded Rs.25,000/- for pain and suffering, Rs.25,000/- for loss of marriage prospects, Rs.25,000/- for loss of amenities and Rs.25,000/- for physical disfigurement.

19. As per discharge summary of Indraprastha Apollo Hospital, Delhi Ex.PW2/A the appellant was admitted on 18.10.2007 and was discharged on 17.11.2007.

20. PW-2 in his evidence has said that after discharge from hospital he used to visit the hospital twice or thrice in a month for about one year. The OPD Cards, medical reports have been filed as Ex.PW2/B. He further states that he has received medical treatment from Abidin Medical Centre, Jamia Nagar, New Delhi where he underwent dressing of the wound. He states that he visited the said hospital daily for about a month.

21. Keeping in view the nature of the prolonged treatment and the nature of injuries suffered, I enhance the compensation payable for pain and suffering from Rs.25,000/- to Rs.50,000/-. I also enhance the compensation for loss of marriage prospects, loss of amenities of life and physical disfigurement from Rs.25,000/- to Rs.50,000/- each.

22. The total compensation now payable to the appellant would read as under:-

Loss of income	Rs. 1,24,576/-
Loss of earning capacity due to disability	Rs.16,67,761/-
Medicines and medical treatment	Rs. 38,514/-
Future	Rs. 2,45,250/-

treatment/artificial limb	
Loss of academics	Nil
Pain and sufferings	Rs. 50,000/-
Loss of marriage prospects	Rs. 50,000/-
Conveyance, special diet and attendant	Rs. 30,000/-
Loss of amenities of life	Rs. 50,000/-
Physical disfigurement	Rs. 50,000/-
TOTAL COMPENSATION	Rs.23,06,101/-

23. The respondent No.1/Insurance company may deposit the additional compensation amount with the Registrar General of this Court, as directed by this court alongwith interest @ 7.5% per annum from the date of filing of the petition i.e. 4.1.2008 till deposit in court

24. The Registrar General may release 50% of the amount to the appellant. Balance 50% be kept in a Fixed Deposit for a period of five years through UCO Bank, Delhi High Court. The appellant shall be entitled to receive quarterly interest on the said amount. Appeal stands disposed of.

JAYANT NATH
(JUDGE)

NOVEMBER 27, 2014

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