

\$~9

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

%

Judgment delivered on: 3rd July, 2014

+ MAC.APP. 553/2011

NEW INDIA ASSURANCE CO. LTD.

..... Appellant

Represented by: Mr. Kanwal Chaudhary,
Advocate.

versus

DHARMENDER KUMAR & ORS.

..... Respondents

Represented by: Mr. S.S. Sisodia, Advocate for
R-1.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide the present appeal the appellant/ Insurance Company has challenged the award dated 19.04.2011 whereby the learned Tribunal has granted compensation for an amount of Rs.12,48,136/-, for the injuries received by the respondent No.1, with interest @ 7.5% per annum from the date of filing of the claim petition till realisation of the compensation amount.

2. Mr. Kanwal Chaudhary, learned counsel appearing on behalf of appellant argues that the injured respondent No.1 as per the disability certificate received 60% disability in relation to right lower limb. However, the learned Tribunal has assessed his functional disability to the extent of 50%.

3. Mr. Chaudhary, learned counsel further submits that the respondent

No.1 was 20 years of age on the date of accident i.e. on 19.06.2010. He was a rickshaw puller. Learned counsel urges that the learned Tribunal ought to have assessed 30% disability in view of the settled law decided in ***Raj Kumar v. Ajay Kumar and Anr.:* (2011) 1 SCC 343**, wherein in Para 5 it is held as under: -

“A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.”

4. Learned counsel further argued that the learned Tribunal has granted higher compensation towards non-pecuniary damages.

5. On the other hand Mr. S.S. Sisodia, learned counsel appearing on behalf of the respondent No.1 injured submits that the respondent No.1 was a rickshaw puller, who received 60% disability in relation to right lower limb. Due to the injury, he is unable to pull the rickshaw. He was admitted in the hospital with crush injuries of right leg. He remained in the hospital for 4 days. His right leg below knee was amputated. He continued with treatment as an OPD patient. As per disability certificate, respondent No.1 injured suffered 60% permanent disability of the right lower limb due to amputation of right leg below knee. He spent Rs.75,000/- on medicines and other expenses. However, he has filed the bill for an amount of Rs.3,035.40 paise only. Thus, the learned Tribunal has awarded Rs.3,100/- for treatment being taken by the injured.

6. On this issue Mr. Sisodia, learned counsel has relied upon the case of

National Insurance Co. Ltd. vs. Hari Om Mittal & Ors.: III (2013) ACC 496 (Del.), wherein the Court held as under: -

*“20. Amputation of right leg above 1/3rd of thigh (right) will adversely affect the earning capacity of a person, specially to a driver, in **Raj Kumar vs. Ajay Kumar, IX (2010) SLT 432 = IV (2010) ACC 815 (SC) = (2011) 1 SCC 343**, it is held as under:*

“Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. 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 earning', 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 find 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. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may."

21. Learned Tribunal while calculating the earning capacity rightly considered 100% functional disability qua whole body.

7. Learned counsel submits that in the case of ***Hari Om Mittal*** (supra) the injured was driver and in the present case the injured was a rickshaw puller.

8. As far as the issue of non-pecuniary is concerned, Mr. Sisodia, learned counsel submits that the injured received crush injuries due to which his right leg below knee was amputated and his disability was assessed 60% in relation to the right lower limb. However, the learned Tribunal has assessed the disability only 50%. He suffered injuries and accordingly the learned Tribunal has awarded Rs.1,00,000/- each towards pain and suffering, loss of amenities of life and disfigurement.

9. I have heard learned counsel for the parties.

10. As far as the issue on disability is concerned, the same has been dealt with in the case of ***Raj Kumar*** (supra).

11. In the present case the injured was a rickshaw puller and with the disability suffered by the injured no one can pull the rickshaw as for pulling a rickshaw one is required to be physically fit especially lower limbs. In such case when there is permanent effect on the avocation of the injured, 100% disability is being considered. However, in the present case the injured received 60% in relation to lower limb. I find no merit in considering 50% functional disability in the present case.

12. As far as issue of non-pecuniary damages are concerned, the right leg below knee of the injured was amputated. He remained hospitalised from 20.06.2010 to 23.06.2010. He spent huge amount on the treatment. As per the treatment record, the injured received crush injuries of right leg vide discharge summary dated 23.06.2010. He was advised to continue his treatment as an OPD patient. He was a young boy of 20 years and enjoying good health.

13. In view of the facts recorded above, I find no substance in reducing the amount towards non-pecuniary benefits.

14. Finding no merit in the instant appeal, the same is accordingly dismissed.

15. The statutory amount be released in favour of the appellant and the balance compensation amount be released in favour of respondent No.1 in terms of the award dated 19.04.2011.

SURESH KAIT, J

JULY 03, 2014

hs