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

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Judgment delivered on: 13th May, 2014

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MAC.APP. No.366 /2010

ORIENTAL INSURANCE CO. LTD.

..... Appellant

Represented by: Mr. L.K. Tyagi, Advocate.

Versus

ANITA GUPTA & ORS.

..... Respondents

Represented by: Mr. Ravindra Narayan, Advocate
for Respondent No.1.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

+ **MAC.APP. No.366 /2010**

1. Vide the present appeal, the appellant/Insurance Company has assailed the award dated 03.04.2010, whereby the learned Tribunal has granted compensation for an amount of Rs.38,75,000/- with interest at the rate of 7.5% *per annum* from the date of filing of the claim petition till realization of the amount.

2. Mr. L.K.Tyagi, learned counsel appearing on behalf of the appellant submitted that the compensation awarded by the learned Tribunal is excessive, exorbitant and the same is not in accordance with the settled principles of assessment of compensation laid down by the Apex Court and this Court.

3. He further submitted that the respondent No.1/injured was alleged to be aged about 36 years at the time of the accident, lawyer by profession and sustained grievous injuries. As per the disability

certificate Ex. PW1/A, filed by the respondent No.1/injured, she had suffered disability to the extent of 90% in relation to her left upper and lower limbs. Considering the facts and circumstances of the case, the learned Tribunal awarded the compensation under various heads as under:-

“(i) Medical expenses	:	Rs. 5,00,000/-
(ii) Proposed future medical expenses	:	Rs. 3,00,000/-
(iii) Domestic help/attendant charges	:	Rs. 1,00,000/-
(iv) Future medication, physiotherapy, conveyance, domestic help/attendant charges	:	Rs. 2,00,000/-
(v) Conveyance, boarding and lodging charges	:	Rs. 1,00,000/-
(vi) Special diet	:	Rs. 1,00,000/-
(vii) Future loss of income	:	Rs. 20,25,000/-
(viii) Mental agony, pain and sufferings	:	Rs. 1,50,000/-
(ix) Loss of amenities of life	:	Rs. 1,50,000/-
(x) Depression and mental state	:	Rs. 1,50,000/-
(xi) Matrimonial discomfort	:	Rs. 1,00,000/-

Total :		Rs 38,75,000/-”

4. Learned counsel further submitted that income of the claimant was taken at Rs.15,000/- per month without any proof or record and the same is on higher side. The claimant had not filed any documents except the certificates alleged to be issued by the Bankers showing some FDRs in the names of her children. Even otherwise, the income of a person cannot be proved from the amount deposited in the FDRs unless the source of said money is proved on record.

5. He further submitted that the loss of earning capacity of the claimant at 100%, as taken by the learned Tribunal, is on a higher side. As per the disability certificate of the claimant, she suffered permanent disability to the extent of 90% in relation to her left upper and lower

limbs but her mental faculties have not been impaired in any manner and as per the statement of the claimant she was helping her husband in court cases. In these circumstances, the claimant can continue to assist her husband by doing the chamber work. Therefore, the loss of earning capacity, at the most, should have been taken by the learned Tribunal as half of the disability suffered, i.e., 45%. As per the law laid down by the Apex Court in case of ***Raj Kumar Vs. Ajay Kumar & Anr. IV (2010) ACC 815***, the physical disability cannot be equated with functional disability.

6. Mr. Tyagi, learned counsel further submitted that the compensation granted under the heads (ix) Rs. 1,50,000/- for loss of amenities of life, (x) Rs.1,50,000/- for depression and mental state and (xi) Rs.1,00,000/- for matrimonial discomfort are duplications, as the compensation for mental agony and loss of amenities of life would include compensation for depression and mental state and matrimonial discomfort. Thus, the total compensation of Rs.4,00,000/- granted by the learned Tribunal under these heads is on a higher side and the same is against the law laid down by the Apex Court in the case ***Raj kumar (supra)***, wherein held as under:-

“ 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.”

7. Learned counsel further submitted that the compensation of

Rs.1,00,000/- each under the heads (v) and (vi) as noted in Para-3 above, for conveyance, boarding and lodging charges and special diet respectively granted by the learned Tribunal is also excessive in the absence of any documentary evidence.

8. He further submitted that the compensation awarded under the heads (ii) and (iv) for proposed future medical expenses and future medication, physiotherapy, conveyance, domestic help/ attendant charges is again duplication.

9. Learned counsel for the appellant further submitted that the learned Tribunal had granted a sum of Rs.5,00,000/- under the heads of proposed future medical expenses; and future medication, physiotherapy, conveyance, domestic help/attendant charges upon which the interest cannot be allowed as per the settled law laid down by the Apex Court in the case of ***R.D. Hattangdi Vs. Pest Control (India) Pvt. Ltd. & Ors. 1995 ACJ 366***, wherein held as under:-

“18. So far the direction of the High Court regarding payment of interest at the rate of 6% over the total amount held to be payable to the appellant is concerned, it has to be modified. The High Court should have clarified that the interest shall not be payable over the amount directed to be paid to the appellant in respect of future expenditures under different heads. It need not be pointed out that interest is to be paid over the amount which has become payable on the date of award and not which is to be paid for expenditures to be incurred in future. As such we direct that appellant shall not be entitled to interest over such amount.”

10. While concluding his arguments, Mr.Tyagi, learned counsel for the appellant submitted that the learned Tribunal is required to grant an award determining the amount of compensation which is to be in the real

sense for ‘damages’, which in turn appears to be ‘just and reasonable’. However, the compensation is not expected to be a windfall for the victims. The statutory provisions clearly indicate that the compensation must be just’ and it cannot be a bonanza, not a source of profit.

11. On perusal of the record, it is revealed that the respondent No.1/injured had examined six witnesses including herself in support of the claim.

12. PW1, Dr. Binod Kalita from LBS Hospital had proved the disability certificate as Ex.PW1/A, issued by the Board of which he was one of the member, wherein disability was shown as 90% with regard to left upper and lower limb.

13. PW2, Dr. V.K. Sharma from Monga Medical Center, Delhi, had treated the respondent No.1/injured when she was admitted in the said hospital.

14. PW3, Abhey Ram, Record Clerk from Safdarjung Hospital, New Delhi, wherein the respondent No.1/injured remained admitted on three different occasions and proved the admission and discharge record as Ex.PW3/A to Ex.PW3/C.

15. PW4, C.L. Premi, Accounts Manager from Monga Medical Center, Delhi has proved the admission and discharge record and MLC of the respondent No.1/injured prepared in the said hospital as Ex.PW4/A.

16. The respondent No.1/injured had examined herself as PW5 and filed her evidence by way of affidavit Ex.PW5/A.

17. PW6, Sunita, Maid Servant, was hired for the respondent No.1/injured subsequent to the accident for looking after her.

18. According to PW5, Anita Gupta, injured, she was a passenger in bus No. DL1PA5730 boarded from Red Fort for coming back to her residence at Laxmi Nagar, Delhi. At about 8.00 PM, the bus was proceeding on Vikas Marg and was reaching to Laxmi Nagar crossing. She was to de-board the bus at Laxmi Nagar Bus Stop. She got up from seat and proceeded towards exit gate. She was holding the rod at the side of front exit gate of the bus. At that time, the bus was being driven at a high speed and in a rash and negligent manner. The bus driver abruptly applied the brakes with full force before the crossing; as a result she fell out of the front gate and came under the rear left wheel of the bus.

19. PW5, further stated, in the accident in question, she received multiple grievous injuries. She remained under treatment as an Indoor patient of Monga Medical Centre from the date of accident, i.e., 18.02.2005 to 07.03.2005. The MLC and discharge summary of Monga Medical Centre has been proved as Ex.PW4/A. She has proved the medical bills of her treatment as Ex.P-79 to Ex.P-292 and her consolidated statement alongwith bills and vouchers as Ex.PW5/J to the amount of Rs. 3,85,987/-.

20. PW2, Dr. V.K. Sharma, Consultant Orthopaedic Surgeon, Monga Medical Centre, deposed that he had treated the injured for fracture in both bones of forearms with crush injuries on the left forearm, with fracture coronoid process (in shoulder) and the left scapula, with surgical emphysema with large haematoma around left thigh and whole gluteus with abrasions left knee. The injured was surgically treated twice on

19.02.2005 and 02.03.2005. The second surgery was on 02.03.2005 followed by plastic surgery. The skin grafting was done by taking the skin from left thigh.

21. Dr. V.K.Sharma, further deposed that even after surgery and treatment, the injured was not completely cured. She was treated only for left forearm. She was advised for further management for the injuries in gluteal region and upper part of left thigh as it required special care as any immediate surgery could have resulted into serious complications.

22. PW3, Abhey Ram, Record Clerk from Safdarjung Hospital, has proved the discharge summary and treatment record of the said hospital for three occasions when injured was admitted there. She remained admitted for the period from 17.03.2005 to 27.04.2005, to this effect the discharge summary is Ex.PW3/A. She was again admitted from 27.05.2005 to 13.06.2005, the discharge summary for this period is Ex.PW3/B. During her stay in the hospital on this occasion, an operation was performed on 30.05.2005 for post traumatic degloving injury debridement and skin grafting under GA and a large portion of skin from thigh of the injured was taken and grafted on her left hip. She was discharged with advice to remain on strict bed rest.

23. The respondent No.1/injured was again remained admitted in the hospital from 22.06.2005 to 28.06.2005, the discharge summary is Ex.PW3/C. On 23.06.2005, an operation was performed for plating and nailing of radius and ulna bones of left forearm alongiwth bone graft. The bone for grafting was taken from right pelvic bone.

24. Thus, in connection with her treatment, the injured was referred to one hospital to another and one place to other such as Safdarjung

Hospital, AIIMS, Apollo, Lucknow, Aligarh, LNJP, LBS, Ganga Ram and even to Chennai. The documents of which have been proved on record by PW5 as Ex.P-5 to Ex.P-62. The respondent No.1/injured was examined by the Medical Board of Rehabilitation, LBS Hospital for assessment of permanent disability which was assessed as 90% of the left lower and upper limb, the disability certificate has been proved as Ex.PW1/1.

25. According to Dr. Binod Kalita, who was one of the members of the Board, examined as PW1, deposed that the patient can move with the help of clutches but not independently. She was unable to tie a knot independently. The patient can attend the daily course to the extent where the right upper limb is normal and the rest of the course cannot be looked after by her independently.

26. On further perusal of the trial court record, it is revealed that her treatment is continuing, despite the long period of hospitalization. She also proved on record the certificate issued from the Apollo Hospital as Ex.P-6 for her future surgery showing approximate expenses as Rs. 1,70,000/-. At the same time, she also placed on record certificate Ex.P-64 issued by the same hospital for her future surgery for removing of plates from forearm, and rough estimate of the surgery was given as Rs.1,00,000/-.

27. The respondent No.1/injured also examined PW6 Sunita, who was working as an attendant with her and was being paid salary of Rs. 2,800/- per month upto March, 2006, Rs.3,200/- from April, 2006 to March, 2007 and after April, 2007 to March, 2008 she has been paid Rs. 3,500/- and from April, 2008 till date of her evidence she was being paid

Rs. 4,000/- per month. Affidavit to this effect is Ex.PW6/A. PW6, Sunita, further deposed that one more domestic help was working with family of the injured for cleaning the house, washing clothes and cooking meals.

28. The claimant is an Advocate by profession and was earning Rs.15,000/- per month from the practice. She deposed that she was helping her husband in court cases in addition to her own separate cases as she was on panel of Insurance Companies. The documents to this effect have been proved as Ex. P-72 to P-74. She has also proved the income generated from her private practice, which she used to put in the FDRs in her name and in the names of her children, which are of the amount of Rs.3,59,300/-, as has been proved vide certificates Ex. P-76 to P-78 issued by the Bankers.

29. Even as per the Workmen Compensation Act, 2011, income of a graduate was Rs.8,814/-, while respondent No.1 is a triple Graduate (B.Sc. B.Ed. and L.LB), M.Sc. PGDBA and Arts etc. Apart, she was looking after the household of the family including teaching to the children.

30. It is proved on record that she was hospitalized for 86 days on five different occasions. She is unable to live a normal life at all. The accident has changed all script of her life. For every small routine work, she needs an attendant to carry out her daily chores.

31. As per the evidence Ex.PW5/A, on all aspects such as nature of injuries, treatment, implants, conveyance, special diet, attendants, value of services rendered by the members of the family, loss of her income, value of services rendered in profession to her husband (the practicing

advocate), value of services rendered as house wife to the family and her present condition etc. have remained unchallenged and unrebutted as the Insurance Company has failed to cross-examine the respondent No.1/injured on any of the issues noted above.

32. The respondent No.1/injured is an Advocate. Due to the accident, her entire movement has been restricted. The legal profession is an exerting and demanding. One has to keep moving and running from one court to another for attending the cases and from one office to another for clientele. This accident has rendered the injured totally unfit to do any kind of work personal or professional. Accordingly, the functional disability of the respondent No.1/injured was assessed as 100%.

33. The loss of mental agony; loss of amenities of life; depression and mental state and matrimonial comforts are independent and separate losses, therefore, there is no duplication in granting the compensation separately towards these heads. Likewise, there is no duplication in granting the compensation for proposed future medical expenses and future medication, physiotherapy, conveyance, domestic help/attendant charges.

34. I am conscious to the dictum of **Raj Kumar** (*supra*), wherein the Apex Court has held 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. It is further held that only a token or nominal amount can be awarded under the heads of loss of amenities or loss of expectation of life.

35. In the case in hand, keeping in view the injuries received by the

respondent No.1/injured and disability assessed as 100%, an amount of Rs.1,50,000/- granted towards loss of amenities of life, in my considered opinion is a nominal amount. However, the learned Tribunal has not granted any amount towards loss of expectation of life.

36. I am also conscious to the dictum of ***R.D.Hattangdi*** (*supra*), wherein the Apex Court held that interest is to be paid over the amount which is payable on the date of award and not which is to be paid for expenditures to be incurred in future. This observation was given in the year 1995, when there was less difference between the rate of inflation and the expenses of treatment. But nowadays, the treatment is getting expensive day-by-day, which cannot be met even with the interest earned by the claimant on the amount granted for future medication, physiotherapy, conveyance, domestic help/ attendant charges, for which the learned Tribunal has granted just Rs.2,00,000/-.

37. Keeping in view the evidence on record and above discussion, I find no merit in the instant appeal. The same is dismissed accordingly.

38. Consequently, the Registry of this Court is directed to release the statutory amount in favour of the appellant/Insurance Company and the remaining compensation in favour of the respondent No.1/injured in terms of the award dated 03.04.2010 on taking necessary steps by her.

CM. Nos. 10949/2010 (for stay) & 19150/2011 (for modification)

With the dismissal of the appeal itself, these applications have become *infructuous*. The same are accordingly dismissed.

SURESH KAIT, J.

MAY 13, 2014/Sb/jg