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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision:24.12.2014

+ MAC.APP. 1150/2014 & CM No.20819/2014
ORIENTAL INSURANCE CO LTD Appellant
Through Mr.Pankaj Seth, Advocate
versus
ASHOK SEN GUPTA & ORS Respondents
Through Mr.S.N.Parashar, Advocate

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

1. The present appeal is filed seeking to impugn the Award dated 4.9.2014. The brief facts are that on 16.7.2008 the respondent No.1 alongwith his friend Pankaj Beri reached Pankha Road, Janakapuri. There he was hit from the backside by an RTV bus said to be driven in a rash and negligent manner. Respondent No.1 suffered injuries and was hospitalised.
2. The controversy centres around the compensation awarded to respondent No.1 by the Tribunal. Based on the evidence on record the Tribunal awarded the following compensation:-

Treatment expenses	Rs.51,236/-
Pain and sufferings	Rs.1,00,000/-
Conveyance, attendant charges and special diet	Rs.55,000/-
Loss of future earning capacity due to disability	Rs.6,24,393/-
Loss of enjoyment of life	Rs.50,000/-
Loss of income during treatment	Rs.36,729/-

Loss of marriage prospects	Rs.50,000/-
Total	Rs.9,67,358/-

3. The Tribunal noted that respondent No.1 has suffered 19% permanent disability in relation to his right upper limb. The Tribunal noted the evidence of PW-3 Dr.Navneet Rustagi, MS(Specialist Ortho), Guru Gobind Singh Govt. Hospital, Delhi. The Tribunal also noted that respondent No.1 was a self employed computer hardware mechanic stated to be earning Rs.10,000/- per month. The Tribunal assessed the functional disability at 50%. As no evidence was filed about the income, the Tribunal took the minimum wages for a matriculate which at the relevant time was Rs.4081/- per month. The Tribunal noting the age of respondent No.1 as 27 years enhanced the said amount by 50% for future prospects for the purpose of computation of loss of future earnings. A sum of Rs.6,24,393/- was awarded using a multiplier of 17 for loss of future earning.

4. Learned counsel appearing for the appellant submits that the compensation awarded is on the higher side. He submits that the disability is not of a nature which would severally hamper the functioning of respondent No.1 and hence the Tribunal has wrongly assessed the functional disability at 50%. It is urged that given the nature of disability the appropriate functional disability would be much less. It is further urged that the Tribunal has after having assessed the income based on minimum wages wrongly enhanced the same for future prospects for the purpose of computation of loss of future earning. Further 1/3rd was not deducted from the said amount for the purpose of computing loss of future income.

5. Coming to the evidence on record the Disability Certificate of

respondent No.1/Ex.PW1/4 reads as follows:-

“This is to certify that Sh.Ashok Sengupta, Age 32 Years/Male, S/o D.K.Sengupta, R/o RZ-224, Raghu Nagar, Shiv Block, New Delhi-110045 is a case of Post traumatic stiffness right elbow and wrist following malunited fracture both bone forearm. He is physical disabled and has 19% (nineteen percent) Permanent physical disability in relation to his right upper limb.”

6. PW-3 Dr.Navneet Rustagi (Specialist) Guru Gobind Singh Hospital, Delhi in his affidavit states that respondent No.1 is suffering from 19% permanent physical disability in relation to right upper limb. He also states that due to this disability respondent No.1 will not be able to do work in his full capacity. Respondent No.1 in his affidavit by way of evidence as PW-1 states that he is a computer hardware mechanic and is self employed. He further states that due to the accident he could not work for one year and his working and earning capacity has been reduced. He further states that had he not suffered the accident he could have started earning Rs.25,000/- per month in future. He states his educational qualifications is 12th Class pass and he also states that he has completed a Computer Hardware Course. A perusal of his Certificate Ex.PW1/16 which is issued by Datacraft shows that he has done a two months course in PC assembling and troubleshooting.

7. From the evidence it is clear that the respondent No.1 has failed to give full details of the effect the disability had on his ability to complete his professional duties. Keeping into account the nature of disability suffered which is akin to stiffness of his right upper limb, in my opinion the functional disability would be appropriately assessed at 40%. I modify the award accordingly.

8. The loss of future earnings would now be Rs.4,99,514.4 [(4,081 + 50%) x 12 x 17 x 40/100].

9. The total compensation would now reads as under:-

Treatment expenses	Rs.51,236/-
Pain and sufferings	Rs.1,00,000/-
Conveyance, attendant charges and special diet	Rs.55,000/-
Loss of future earning capacity due to disability	Rs.5,00,000/-
Loss of enjoyment of life	Rs.50,000/-
Loss of income during treatment	Rs.36,729/-
Loss of marriage prospects	Rs.50,000/-
Total	Rs.8,42,965/-

10. As far as future prospects are concerned, I can take judicial note of the fact that minimum wages for a matriculate in 2002 were Rs.3115.4/- P.M. and in 2012 were Rs.8528/- P.M. It is obvious that the prescribed minimum wages have more than doubled in ten years.

11. In case of ***Rajesh & Ors. vs. Rajbir Singh & Ors., (2013) 9 SCC 54*** the Supreme Court held that in the case of self employed or those on fixed wages, when the victim is below 40 years an addition of 50% should be made in the wages for the purpose of computing loss of future earnings.

12. In the case of ***V.Mekala vs. M.Malathi & Anr., 2014 ACJ 1441***, the Supreme Court in the case of injury to a student who was studying in Class XI aged 16 years had awarded 50% increase for future prospects.

13. The last submission of learned counsel for the appellants, is about deduction of 1/3rd income for assessing loss of future earnings. In my

opinion, there are no grounds made out for deduction of 1/3rd of the compensation amount.

14. The appeal is accordingly disposed of. The statutory amount deposited by the appellant at the time of filing the appeal be released to the appellant/insurance company. The appellant may comply with the Award as modified by this order within six weeks from today.

15. Dasti.

JAYANT NATH, J

DECEMBER 24, 2014

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