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

Date of decision: 26th March, 2015

\+ **MAC.APP. 45/2012**

ORIENTAL INSURANCE CO. LTD. ..... Appellant

Through: Mr. Tarkeshwar Nath, Adv. with Mr. Saurabh Kumar Tuteja, Adv.

versus

BALRAJ SINGH & ORS. ..... Respondents

Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

G. P. MITTAL, J. (ORAL)

1. There is twin challenge to the judgment dated 07.10.2011passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of ₹5,12,500/- was awarded in favour of Respondent no.1 for having suffered multiple injuries including permanent disability in respect of his left lower limb because of shortening of his left leg.

2. Respondent no.1 had to take 563 days leave including 123 days leave without pay. The Claims Tribunal awarded the compensation as

tabulated in para 18 of the impugned judgment which is extracted hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Medical Expenses	86,000/-
2.	Pain & sufferings & Loss of Enjoyment of Life	40,000/-
3.	Special Diet, Attendant & Conveyance Charges	55,000/-
4.	Loss of Income	2,81,500/-
5.	Loss of Future Income	50,000/-
	Total	**Rs.5,12,500/-**

3. The learned counsel of the Appellant objects to the award of compensation of ₹2,81,500/- towards loss of income and ₹50,000/- towards loss of future income.

4. It is urged by the learned counsel for the Appellant that out of 563 days leave only 123 days leave were availed by Respondent no.1 without pay, rest of the leaves were commuted leave and earned leave on which Respondent no.1 was paid salary.

5. The second contention raised is that Respondent no.1 was in Government service. Hence, there was no loss of earning capacity as

in spite of disability, Respondent no.1 continued to get his salary and increments. Thus, the compensation of ₹50,000/- towards loss of future income was unjustified.

6. It is well settled that if victim loses his leave, he is entitled to be compensated for loss of leave. A reference in this connection may be made to *Ramveer Singh v. Rajesh Kumar & Ors. 2013 (133) DRJ 568.* In para 6 of the report it was held by me as under:-

> *"6. From the certificate Ex.PW1/4, it was established that the Appellant was on leave from 16.12.2007(the date of the accident) to 16.04.2009, that is, for a period of about 16 months. He was again on leave for one month from 14.12.2009 to 14.01.2010 which was proved by the certificate Ex.PW1/5. The Claims Tribunal instead of granting compensation on account of actual loss of leave, granted a lumpsum compensation of ₹50,000/- on the ground that the Appellant was paid salary during this period. A victim of a motor vehicle accident cannot be made to suffer loss of his full pay leave or the medical leave for the benefit of the tortfeasor. An employee loses an opportunity for encashment of leave at the time of his superannuation if the leaves are exhausted during service. In the circumstances, the Appellant is entitled to be paid full salary for the loss of leave."*

7. It is not disputed that Respondent no.1 lost 563 days leave and he was awarded compensation of ₹2,81,500/- towards loss of leave for 447 days and loss of pay of 123 days. The award of ₹2,81,500/-, therefore, cannot be faulted.

8. As far as loss of future income is concerned, the Claims Tribunal rightly took judicial notice of the fact that Respondent no.1's chances of getting re-employment will be substantially affected after his superannuation because of shortening of his left leg.

9. The Claims Tribunal, on appreciation of evidence of PW4 awarded compensation to the extent of just 4% of loss of earning capacity. In my view, the Claims Tribunal was too conservative in taking just 4% of loss of earning capacity on the age of his retirement.

10. In my view, chances of getting alternative employment after retirement will be considerably reduced and thus, the award of compensation on a multiplier of '7' to the extent of 4% cannot be faulted.

11. The appeal is devoid of any merit; the same is accordingly dismissed.

12. Statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company.

13. Pending applications, if any, also stand disposed of.

(G.P. MITTAL)
JUDGE

MARCH 26, 2015
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