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

Date of decision: 12th January, 2015

+ **MAC.APP. 64/2012**

NEW INDIA ASSURANCE CO LTD Appellant

Through: Mr. Abhishek Kumar, Adv.

versus

CHANDER SHEKHAR & ORS Respondents

Through: Mr. Y.S. Chauhan, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

G. P. MITTAL, J. (ORAL)

1. This appeal is directed against the judgment dated 14.10.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs.14,42,826/- was awarded in favour of Respondent No.1 for having suffered serious injuries in a motor vehicular accident which occurred on 10.09.2005 at about 6:40 p.m. at Liyo Chowk, Konsewar Road, Rewari, Haryana. The compensation as computed in para 19 of the judgment is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal (in Rs.)
1.	Compensation on account of pain and sufferings	10,000/-

2.	Compensation on account of medicines, medical treatments and conveyance	63,826/-
3.	Special Diet	5,000/-
4.	Compensation on account of permanent disability and loss of income	13,44,000/-
5.	Compensation on account of physical disfigurement	10,000/-
6.	Compensation on account of loss of enjoyment and amenity of life	10,000/-
	Total	Rs.14,42,826/-

2. The only contention raised by the learned counsel for the Appellant Insurance Company is that the Claims Tribunal erred in not assessing the functional disability of Respondent no.1 and instead straightway proceeded to award compensation on the basis of permanent disability suffered by Respondent no.1 on the basis of Disability Certificate Ex.PW-3/A.

3. *Per contra*, learned counsel for Respondent no.1 urges that Respondent no.1 was a young person having suffered traumatic paraparesis (# L2). Respondent no.1 lost strength in both of his lower limbs as a result of which he cannot walk without the help of a stick, he cannot run and he is unable to join any service including military service where an active person is required.

4. It is urged that the Appellant remained confined to hospital for about 20 days. He remained an OPD patient for about nine months. He was unable to join his duties for a period of about nine months. It is urged that the compensation awarded towards conveyance /special diet is on the lower side. No compensation was awarded towards gratuitous services rendered by the family members.
5. In *Raj Kumar v. Ajay Kumar & Anr.*, 2011 (1) SCC 343, the Supreme Court brought out the distinction between permanent disability and functional disability resulting in loss of earning capacity. It was laid down that compensation on account of loss of earning capacity has to be granted in accordance with the nature of the job undertaken by the victim of the motor accident. Paras 11 and 14 of the report are extracted hereunder:

“11. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said

percentage for determination of compensation (see for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. 2010 (10) SCC 254 and Yadava Kumar v. D.M., National Insurance Co. Ltd. 2010 (10) SCC 341.

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14. 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 earnings', 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 found 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."

6. Immediately after the accident on 10.09.2005, Respondent no.1 was removed to Birender Hospital at Loyo Chowk, Konsewas Road,

Riwari, Haryana. On the next date, *i.e.* , on 11.09.2005, he was shifted to Safdarjung Hospital where he remained admitted till 30.09.2005. Thereafter, Respondent no.1 remained an outdoor patient (OPD) for a period of about two months. Respondent no.1 subsequently remained an outdoor patient in Indian Spinal Injuries Centre, a Super Speciality Hospital, where failure of the movement of his lower limbs, *i.e.*, hips, knee, ankles and toes and sensory was made from time to time. The assessment made in April, 2006 as stated in OPD card dated 11.04.2006 is extracted hereunder:-

*“ Balance – Sit without support for good amount of time.
- Stand with support, cannot maintain his COG for long without support.
- Sway and control in sitting.
Co-ordination – Moderately good.
Gait – Walking is possible with elbow crutches and gaiter on right leg.
- Stair climbing with assistance.”
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7. It is not in dispute that at the time of the accident Respondent no.1 was getting a salary of about Rs.24,326/- and after joining duty with same company the appellant changed his job and got an employment @ Rs.35,000/- per month. It is very unfortunate that no evidence whatsoever was brought with regard to inconvenience and impact of the permanent disability on the day to day life of Respondent no.1. A perusal of the OPD card dated 11.04.2006 issued by Indian Spinal

Injuries Centre, a Super Speciality Hospital and various other documents reveal that Respondent no.1 suffered fracture of L2 vertebrae with neurological involvement. This was the reason that hip, knee, ankle and foot movement of Respondent no.1 was affected. So much so that movement of right ankle even after seven months of the accident was NIL.

8. In view of this, it is evident that although Respondent no.1 was not entitled to any compensation towards loss of future earning capacity but he was entitled to be compensated not only for loss of income for not attending the job or taking paid leaves but also for loss of amenities in life, disfigurement and inconvenience. Respondent no.1 claims a compensation of Rs.85,000/- towards purchase of medicines. He was able to produce bills for a sum of about Rs.65,000/-. The Court can take judicial notice of the fact that all the bills cannot be retained by a person of his relations who have suffered such a serious injury and gets treatment in various hospitals. The compensation awarded is hence re-computed as under:-

Sl. No.	Compensation under various heads	Awarded by this Court (in Rs.)
1.	Loss of income for nine months (24,000/- x 9)	2,16,000/-

2.	Pain and suffering	75,000/-
3.	Conveyance	25,000/-
4.	Special Diet	25,000/-
5.	Loss of amenities in life, Loss of enjoyment and on account of permanent disability	2,00,000/-
6.	Gratuitous service rendered by the family members @ Rs.5,000/- for eight months	40,000/-
	Total	Rs.5,81,000/-

9. The compensation awarded is accordingly reduced from Rs.14,42,826/- to Rs.5,81,000/- which shall carry interest @ 7.5% per annum as awarded by the Claims Tribunal.
10. Eighty per cent of the compensation amount was ordered to be deposited in Court vide order dated 17.01.2012 and 60% from the same was ordered to be released by order dated 30.04.2013. Excess amount released to Respondent no.1 shall be refunded to the Appellant. Remaining amount shall also be released in favour of the Appellant.
11. The Appeal is allowed accordingly.

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

(G.P. MITTAL)
JUDGE

JANUARY 12, 2015
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