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

Date of Pronouncement: 03 July, 2015

+ MAC.APP. 146/2013

UNITED INDIA INSURANCE CO. LTD. Appellant
Through Mr.L.K.Tyagi, Advocate.

versus

SANJAY KUMAR & ORS. Respondents
Through Mr.Peeush Sharma, Advocate for
R-1

+ MAC.APP. 459/2013

SANJAY KUMAR Appellant
Through Mr.Peeush Sharma, Advocate.

versus

UNITED INDIA INSURANCE
CO. LTD & ORS Respondents
Through Mr.L.K.Tyagi, Advocate for R-1

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. MAC APP. 146/2013 is filed by the Insurance Company seeking to impugn the Award dated 01.12.2012. MAC APP 459/2013 is filed by the claimant seeking enhancement of the compensation awarded by the Tribunal.

2. The brief facts are that on 28.08.2008, the claimant was returning to his house from Gurgaon on his motorcycle. When he reached at Daulat

Pur, he was hit by a DTC bus said to be driven in a rash and negligent manner. The claimant fell down on the road and sustained multiple/grievous injuries on his body. The present claim petition has been filed seeking compensation for the said accident.

3. Based on the evidence on record, the Tribunal concluded that the accident took place due to rash and negligent driving of the driver of the offending vehicle.

4. On compensation, the Tribunal awarded a total compensation as follows:-

1	Medicines and treatment	:	Rs.1,19,330/-
2	For loss on account of permanent disability	:	Rs.22,24,185/-
3	Pain and Suffering	:	Rs. 50,000/-
4	Conveyance & Special Diet	:	Rs. 30,000/-
5	Loss of Amenities	:	<u>Rs.30,000/-</u>
	Total	:	<u>Rs. 24,53,515/-</u>

5. The Tribunal noted that as per PW-6 Dr. J.P. Singh who proved the disability certificate Ex.PW-6/A the medical board that re-examined the claimant on 21.09.2011 found that the claimant had 67% permanent disability in relation to his right lower limb. The Tribunal noted that in his cross-examination, he has stated that the disability would affect his walking, stair climbing capacity, standing on the affected leg, squatting on the floor, sitting with cross-legs and kneeling. The Tribunal assessed the functional disability at 67%. The Tribunal took the income of the claimant as Rs.13,300 as per the evidence on record as he was employed with M/s.R.N. Infra Communication Pvt. Ltd. The Tribunal enhanced the same by 30% on account of future prospects. The Tribunal also noted that

as the claimant was aged 32 years at the time of the accident, a multiplier of 16 would be appropriate. The Tribunal awarded a sum of Rs.22,24,185/- toward loss of earning due to disability.

6. Learned counsel appearing for the Insurance Company has impugned the Award on two grounds. He firstly submits that there was no justification for the Tribunal to assess the functional disability at 67% when the physical disability was also 67%. Reliance is placed on the judgment of the Supreme Court in the case of ***Raj Kumar vs. Ajay Kumar, (IV) 2010 ACC 815***. It is secondly submitted that the Tribunal has wrongly awarded 30% increase in the income due to future prospects. It is submitted that there is nothing to show that the claimant had a permanent job and hence there was no basis for the Tribunal to have awarded future prospects while computing loss on account of permanent disability.

7. Learned counsel appearing for the claimant has refuted the submissions of the learned counsel for the Insurance Company. He submits that the Tribunal has wrongly assessed the functional disability at 67%. Reliance is placed on the fact that the services of the claimant were terminated by his employer. It is stressed that the claimant has not been able to find a gainful employment and hence the functional disability should have been assessed at 100%. Learned counsel also submits that the future prospects granted to the claimant was only 30% whereas it should have been 50% for the purposes of computing loss on account of permanent disability inasmuch as the claimant on the date of the accident was 32 years of age. It is lastly submitted that no compensation has been awarded on account of attendant charges and the compensation awarded

on account of pain and suffering and loss of amenities is on the lower side.

8. I will first deal with the issue of functional disability. The Supreme Court in the case of *Raj Kumar vs. Ajay Kumar & Ors. (supra)* culled out the methodology for determining functional disability in paragraph 14 holding as follows:-

“14. 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 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. 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."

9. PW-6-Dr.J.P.Singh who has proved the disability certificate as Ex.PW-6/A has in his cross-examination stated that the disability would affect the claimant's walking, stair climbing capacity, standing on the affected leg, squatting on the floor, sitting with cross-legs and kneeling.

10. PW-4-Sh.Ravinder Singh, representative from the employer has said that after the accident on 28.08.2008 the claimant has not attended the office. His cross-examination took place on 27.03.2010 where he has confirmed that his company has not terminated the services of the claimant. He was recalled on 24.09.2010 where he has exhibited the letter

of termination of the services of the claimant w.e.f. 29.08.2008 which is dated 05.05.2010. In his cross-examination, he confirms that Ex.PW-4/D is not on the letter head of the company. He confirms that no notice has been issued by the employer to the claimant asking him to resume his duties.

11. Keeping into account, the above nature of the medical disability suffered and the fact that the claimant had not been able to attend his office, in my opinion the Tribunal has rightly assessed the functional disability at 67%.

12. There is no merit in the contention of the learned counsel for the claimant that the functional disability should be fixed at 100% as the services of the claimant have been terminated. PW-1, namely, the claimant in his affidavit by way of evidence does not state anywhere that the disability is of a nature which does not enable to him to carry on his duties. In fact his affidavit by way of evidence is completely silent on the nature of the work that was being performed by him except stating that he was a site supervisor. PW-4 has stated that the claimant was a high school pass. He has done his intermediate from the National Open School, Delhi and ITI from Malviya Nagar, New Delhi. The testimony of PW-4 on the issue of termination of the services of the claimant are not worthy of acceptance. Firstly on 27.03.2010 he has said that the services have not been terminated. Later on when he was recalled on 24.09.2010 he stated that the services of the claimant have been terminated w.e.f. 29.08.2008. The termination letter dated 05.05.2010 inspires no confidence. The termination letter is dated 05.05.2010 but termination is with effect from 29.08.2008. This letter dated 05.05.2010 is an after thought and cannot

be believed. In the absence of any cogent evidence to show that the functional disability suffered is 100%, the contention of the claimant seeking 100% functional disability cannot be accepted.

13. As far as future prospects are concerned, 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. It is true that the claimant on the date of the accident was 32 years of age. In the case of ***Rajesh & Ors. vs. Rajbir Singh & Ors. (supra)*** it was clearly brought out that where the claimants are below 40 years old, the future prospects should be awarded at the rate of 50% to the assessed income.

14. In the light of the above, I enhance the compensation for the loss on account of permanent disability by enhancing the assessed income of the claimant of Rs. 13,300/- by 50% on account of future prospects. The compensation for loss on account of permanent disability would now be Rs.25,66,368/- [(Rs.13,300/- + 50%) x 67% x12 x16]

15. Regarding the balance submission of the learned counsel for the claimant, I see no basis for any further enhancement of compensation on account of attendant charges or pain and suffering.

16. The total enhanced compensation amount would now read as follows:

1	Medicines and treatment	:	Rs.1,19,330/-
2	For loss on account of permanent disability	:	Rs.25,66,368/-
3	Pain and Suffering	:	Rs. 50,000/-
4	Conveyance & Special Diet	:	Rs. 30,000/-

5	Loss of Amenities	:	<u>Rs.30,000/-</u>
	Total	:	<u>Rs.27,95,698/-</u>

17. The Insurance Company may deposit the additional compensation amount along with interest @ 7.5% per annum from the date of filing of the claim petition till deposit in court. The said amount be deposited with the Registrar General of this court. On receipt of the same, the same amount and the amount, if any, lying deposited with this court with accumulated up to date interest may be released to the claimant as per the directions of the Tribunal.

18. Interim orders stand vacated.

19. MAC. APP. 146/2013 stands dismissed.

20. MAC. APP. 459/2013 stands disposed of.

(JAYANT NATH)
JUDGE

July 03, 2015
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