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

Date of decision: 20th May, 2015

\+ **MAC.APP. 572/2012**

RELIANCE GENERAL INSURANCE CO. LTD. ...... Appellant
Through: Mr. Sameer Nandwani, Adv.

versus

MALTI DEVI & ORS. ..... Respondents
Through: Mr. Navneet Goyal, Adv. for R-1.

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

G. P. MITTAL, J. (ORAL)

1. The Appeal is directed against the judgment dated 18.02.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of ₹11,42,180/- was awarded in favour of Respondent no.1 for having suffered injuries in a motor vehicular accident, which occurred on 19.05.2008.

2. Additionally, counsel's fee of ₹25,000/- was also granted in favour of Mr. Sumit Gupta, Advocate. The compensation awarded in tabulated form is extracted hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Medical Expenses	13,600/-

2.	Loss of Income	10,500/-
3.	Loss of Earning Capacity	3,88,080/-
4.	Special Diet	10,000/-
5.	Conveyance Charges	10,000/-
6.	Future Medical Treatment Expenses	4,00,000/-
7.	Attendant Charges	10,000/-
8.	Pain and Sufferings & Trauma	1,50,000/-
9.	Loss of Amenities and Enjoyment of Life	1,50,000/-
	Total	**Rs.11,42,180/-**

3. There is twin challenge to the judgment. It is urged by the learned counsel for the Appellant that the award of counsel's fee directly to the Advocate was not permissible. Secondly, there was 44% disability suffered by Respondent no.1 in respect of right lower limb on account of post traumatic equino cavovarus deformity of right foot and ankle. Respondent no.1 was engaged in doing knitting work. The Claims Tribunal erred in taking functional disability to the extent of 44%. It is thus, urged by the learned counsel for the Appellant that the functional disability ought to have been taken to be much less than 44%.

4. The learned counsel for Respondent no.1 concedes to the first ground. He however, states that the compensation awarded to Respondent no.1 is just and reasonable. Rather, the functional disability of 44% taken is on the lower side. The aspect functional disability was dealt with by the Claims Tribunal in Para 16 and 18 of the impugned judgment which are extracted hereunder:-

> *"16. Physical disability of the petitioner was opined to be 44%. The court has to assessed the functional disability arising out of the physical disability. In support of this, she examined Dr. Ashok Makhija, who stated that on examination she was suffering from post traumatic equino cavovarus deformity or right foot and ankle. Due to the said deformity the patient could not put the sole of the foot in plantigrade manner and has stiff painful restricted movement of the foot and ankle. It is contended by counsel for the petitioner that because of her inability to stand as per own statement, she became permanent crippled and unable to run, squat, climb stairs or even to walk properly due to the injuries sustained in the accident in question. The functional disability should be taken as 100% because she was not be in a position to go to the people for seeking knitting work assignment. She will not been in a position to discharge her daily household chores and she will not be in a position to do knitting and stitching job which she was performing and she is not in a position to squad and in view of the special facts and circumstances of the case in this case the permanent disability is assessed at 100%.*
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> *18. As no deduction from income has to be taken towards personal expenses in case of injury as per decision of Delhi High Court in Bimla vs. Gopal MAC. APP No.1028/2006 decided on 22-3-20120 so the total loss of future income or earning capacity comes to Rs.3,88,080/- as per the formula (Rs.5250/- x 12 x 14 x*

> *44%). Accordingly petitioner is granted loss of future income at ₹3,88,080/-."*

5. I have the trial court record before me.

6. It is true that Respondent no.1 was engaged in doing the knitting work. She was also carrying out the household work. The Claims Tribunal had assessed the monthly income of Respondent no.1 to be ₹3500/- per month. However, the loss of earning capacity was taken to be ₹5250/- per month. Further, no separate compensation towards the loss of gratuitous services as a housewife was granted to Respondent no.1 by the Claims Tribunal.

7. In my view, the Claims Tribunal was very conservative in awarding the loss of earning capacity to the extent 44% of ₹5250/- per month only. It cannot be said that the compensation of ₹3,88,080/- on a multiplier of 14 (the age of Respondent no.1 being 45 years) towards loss of earning capacity was on the higher side. The overall compensation of ₹11,42,180/- awarded by the Claims Tribunal is just and reasonable and is thus affirmed.

8. As far as the order with regard to payment of Counsel's fee of ₹25,000/- to the counsel is concerned, the same is set aside in view of the judgment of this Court in *ICICI Lombard General Insurance Co.*

Ltd. v. Kanti Devi and Ors. MAC APP No. 645/ 2012 decided on 30.07.2012.

9. The compensation awarded shall be disbursed/held in Fixed Deposit in terms of the order passed by the Claims Tribunal.

10. The appeal is disposed of in above terms.

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

12. If the counsel's fee has already been deposited by the Appellant, the same shall also be refunded.

(G.P. MITTAL)
JUDGE

May 20, 2015
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