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

Decided on: 22nd January, 2015

\+ **MAC.APP. 587/2011**

UNITED INDIA INSURANCE CO. LTD.

..... Appellant

Through: Mr. Manish Kaushik, Adv.

versus

ASHOK KUMAR & ORS. ..... Respondents

Through : Ms.Shanta Devi Raman, Adv. for R-1.
Mr.A.P.Aggarwal, Adv. for R-2.

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

JUDGMENT

G. P. MITTAL, J. (ORAL)

1. The appellant United Insurance Company Limited impugns the judgment dated 21.03.2011 passed by the Claims Tribunal awarding compensation of ` 6,95,951/- to Respondent no.1 for having suffered injuries in a motor vehicular accident which occurred on 16.01.2005.

2. Relying on *Raj Kumar v. Ajay Kumar & Anr., 2011 (1) SCC 343*, the sole ground of challenge raised by the learned counsel for the appellant is that Respondent no.1 was employed as a driver in Delhi Transport Corporation (DTC). He suffered 62% disability in respect of his right lower limb leading to permanent locomotor impairment. Though, on account of the injuries suffered by him, Respondent no.1 was not able to drive a bus, yet he was posted on an alternative job and

thus, he did not suffer any pecuniary loss because of the permanent disability.

3. It is therefore, urged that the Claims Tribunal's award of ` 4,28,968/- towards loss of earning capacity is illegal and without application of mind.

4. On the other hand, Ms.Shanta Devi Raman, learned counsel for Respondent no.1 has referred to the testimony of Respondent no.1, PW-3 Dr. Shobha Arora and PW-4 Bihari Lal. She argues that the injuries of Respondent no.1 were very severe. He suffered fracture of right leg bones. He had to undergo five surgeries. He remained in and out of the Hospital for over one year for treatment and hence, could not go to work.

5. The following contentions are thus, raised by the learned counsel for Respondent no.1:-

(i) Respondent no.1 being a driver suffered 100% disability because of locomotor impairment in his right lower limb;

(ii) He remained on leave for fifteen months but he was granted compensation for loss of income only for three months;

(iii) The compensation awarded towards loss of amenities, loss of enjoyment and disfigurement on the lower side;

(iv) The compensation awarded towards attendant charges was also on the lower side;

(v) Because of leave without pay, Respondent no.1 lost one increment for the rest of the period of his service including pensionary benefits.

The learned counsel for Respondent no.1 therefore, urges that the compensation awarded was not adequate and the compensation is liable to be enhanced.

PERMANENT DISABILITY:

6. In *Raj Kumar versus Ajay Kumar (supra)*, the Supreme Court laid down that : to compensate the injured towards permanent disability, functional disability has to be measured.

7. It is pointed out that in certain cases, permanent disability may not impact the earning capacity of the victim and in such cases, the victim may not be entitled to any compensation towards loss of earning capacity on account of permanent disability, yet in other cases, even on account of less permanent disability, an injured may be completely incapacitated to carry out his vocation and hence, the functional disability may be much more than the permanent disability suffered by the injured.

8. The Hon'ble Supreme Court gave an instance that if the left hand of the claimant who is the driver by profession, is amputated, the actual loss of earning capacity may virtually be 100%.

9. In the instant case, Respondent no.1 was incapacitated to work as a driver but at the same time, he was working in the DTC on some other post and, therefore, the permanent disability did not impact his earning capacity except that he lost an increment because of him having taken leave without pay for about an year. At the same time, it has to be noted that the age of retirement in DTC is 60 years and the permanent disability will incapacitate Respondent no.1 to work as a driver.

10. It may also be difficult for him to perform an alternative employment with full efficiency. Respondent no.1 was taking a salary of `9661/- at the time of accident.

11. Hence, I will take the increment of Respondent no.1 on the day of accident as `300/- and thereby award a compensation of `46,800/- (`300X12) X 13(multiplier) towards loss of increment.

12. Because of permanent locomotor impairment and 62% disability, I am inclined to hold that his loss of earning capacity after the age of 60 years would be about 50% and thereby, I award a compensation of ` 5,21,694/- (9661X12X9X50%) towards loss of earning capacity.

13. I have the record of trial court before me. PW-4 Bihari Lal deposed that Respondent no.1 remained on medical leave from 16.01.2005 to 15.04.2005, 16.04.20115 to 15.05.2005, 16.05.2005 to 13.10.2005 and then for three months up to 5.12.2005 and was on complete leave for the year 2006. He further stated that Respondent

no.1 was absent without leave from 18.04.2006 to 09.04.2006, 10.07.2006 to 26.01.2007 and he joined his duties on 27.01.2007.

14. Respondent no.1 was hence, away from work either on leave with pay, or on leave without pay for a period of about 15 months. He is hence, entitled to compensation of `1,44,915/- (`15X9661) for the loss of leave or for loss of salary for the period he had to take leave without pay.

15. The Claims Tribunal awarded a compensation of `18,000/- towards attendant charges. PW-3 Dr. Shobha Arora stated that Respondent no.1 needed an attendant from the date of accident till 18.10.2005. Thus, Respondent no.1 would be entitled to attendant charges for a period of nine months instead of six months. The compensation is hence, raised from `18,000/- to `27,000/- under this head.

16. The Claims Tribunal awarded a compensation of `1 lakh towards loss of amenities. The amount of compensation towards amenities should be able to bring the amenities and restoration of health to Respondent no.1. In the circumstances, the sum awarded seems to be just and reasonable. The compensation awarded is hence, re-computed as under:-

Sl. No.	**Compensation under various heads**	**Awarded by the Claims Tribunal (in Rs.)**	**Awarded by this Court (in Rs.)**

1.	Pain & sufferings	`1,00,000/-	`1,00,000/-
2.	Loss of amenities, loss of enjoyment and compensation for disfiguration	`1,00,000/-	`1,00,000/-
3.	Loss of leave for three months.	`28,983/-	`1,44,915/-
4.	Expenses towards attendant (for six months @ ` 3,000/- per month)	`18,000/-	`27,000/-
5.	Special diet and conveyance	`20,000/-	`20,000/-
6.	Loss in earning capacity due to disability (30%X 9166X12X13)	`4,28,968.8/-	`5,21,694/-
7.	Loss of increment	--	`46,800/-
	TOTAL (Rounded off)	`6,95,951.8/- `6,96,000/-	`9,60,409/-

17. The compensation is hence, enhanced by ` 2,64,409/-.

18. It is averred by the learned counsel for the appellant that there is no cross- appeal or cross-objections by Respondent no.1. However, the question whether enhancement of the amount without filing cross-appeal or cross-objections has been dealt with by this Court in MAC APP. 629/2010 titled *Oriental Insurance Company Limited versus Mamta Kumari & Ors.*, decided on 06.09.2012 wherein this

Court in paras 13 to 19 has held as under:-

> *"13. The theory of not awarding compensation more than the amount claimed got a sea change with the judgment of the Supreme Court in Nagappa v. Gurudayal Singh & Ors., (2003) 2 SCC 274, wherein the Supreme Court held that there is no restriction that compensation could be awarded only up to the amount claimed by the Claimant. In an appropriate case where from the evidence brought on record if the Tribunal/Court considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such an award. The Supreme Court said that the only embargo was; that it should be 'just' compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable. Para 21 of the report is extracted hereunder:*
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> *"21. In our view, under the M.V. Act, there is no restriction that Tribunal/Court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/Court is to award 'just' compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under Sub-section(4) to Section 166, even report submitted to the Claims Tribunal under Sub-section (6) of Section 158 can be treated as an application for compensation under the M.V. Act, If required, in appropriate cases, Court may permit amendment to the claim Petition."*
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> *14. In National Insurance Company Ltd. v. Rani, 2006 ACJ 1224, a Division Bench of Madras High Court held that without filing any Appeal or Cross-Objections, High Court is competent to enhance the compensation in*

favour of a victim of a motor vehicle accident by invoking provisions of Order XLI Rule 33 Code of Civil Procedure(Code). Para 16 of the report is extracted hereunder:

> *"16. At the risk of repetition it may be stated that the contention put forward is that the Court is duty bound to fix the just compensation. The fact that the Claimants have not filed any cross objection would not stand in the way and further the Court can by invoking the powers conferred under Order XLI Rule 33 of CPC, is satisfied, can enhance the compensation and call upon the Claimants to pay necessary court fee. In that context, the learned counsel also submitted, when the Supreme Court has ruled that even at the appellate stage original petition can be amended claiming enhanced compensation, the Court enhancing compensation in the instant case, if satisfied, invoking powers under Order XLI, Rule 33 will certainly be in order."*

15. In Oriental Fire and General Insurance Co. Ltd. v. Amarsingh Pratapsingh Sikliker, 1(1993) ACC 627, a Division Bench of Gujarat High Court held that the Appellate Court was empowered to grant adequate compensation so as to do substantial justice between the parties even in absence of Cross-Objections or Appeal. Para 17 of the report is extracted hereunder:

> *"17. It becomes very clear from the aforesaid provisions that the appellate Court is empowered to grant adequate relief so as to do substantial justice between the parties even in absence of cross-objections or appeal...."*

16. In Sone Ram v. Jayaprakash, AIR 1986 MP 21, the High Court of Madhya Pradesh exercising power under Order XLI Rule 33 of the Code enhanced the compensation granted by the Claims Tribunal even *though no Appeal was preferred by the Claimant. In the case of Sewaram alias Sewan v. Nanhe Khan alias Asgar Beg, 1987 ACJ 354(MP), the High Court of Madhya Pradesh awarded 10% interest on the compensation amount in the absence of any Appeal or Cross-Objections by the Claimants.*

17. A learned Single Judge of this Court in National Insurance Co. Ltd. v. Komal & Ors., MANU/DE/2870/2012, (MAC. APP. No.595/2007 decided on: 27.04.2012) referred to the judgments of the Supreme Court in Pannalal v. State of Bombay, AIR 1963 SC 1516; Rameshwar Prasad v. M/s Shyam Beharilal Jagannath, (1964) 3 SCR 549; Nirmal Bala Ghose v. Balai Chand Ghose, AIR 1965 SC 1874; Giasi Ram v. Ramjilal, AIR 1969 SC 1144; Harihar Prasad Singh v. Balmiki Prasad Singh, (1975) 2 SCR 932; Mahant Dhangir v. Madan Mohan, (1988) 1 SCR 679; State of Punjab v. Bakshish Singh, (1999) 8 SCC 222 and judgments of various High Courts to opine that the High Court is empowered to enhance the compensation without filing any Appeal or Cross-Objections by a Claimant.

18. In Ibrahim v. Raju, AIR 2012 SC 534, a compensation of ₹3,00,000/- was claimed by the Appellant which resulted in an award of ₹60,000/- by the Claims Tribunal. The compensation was enhanced to ₹1,89,440/- by the High Court, which was enhanced to ₹6,00,000/- by the Supreme Court. Para 21 of the report is extracted hereunder:

"21. We are conscious of the fact that in the petition filed by him, the Appellant had claimed compensation of Rs. 3 lacs only with interest and cost. It will be reasonable to presume that due to financial incapacity the Appellant and his family could not avail the services of a competent lawyer and make a claim for adequate compensation. ***However, as the***

> ***Tribunal and the High Court and for that reason this Court are duty bound to award just compensation,*** *(emphasis supplied) we deem it proper to enhance the compensation from Rs. 1,89,440/- to Rs. 6 lacs. This approach is in tune with the judgment in Nagappa v. Gurudayal Singh, (2003) 2 SCC 274. In that case, the Court considered a similar issue, referred to the judgments of the Bombay High Court in Municipal Corporation of Greater Bombay v. Kisan Gangaram Hire, 1987 ACJ 311(Bombay), Orissa High Court in Mulla Mod. Abdul Wahid v. Abdul Rahim,1994 ACJ 348 (Orissa) and Punjab and Haryana High Court in Devki Nandan Bangur v. State of Haryana, 1995 ACJ 1288 (P & H)."*
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> *19. In New India Assurance Co. Ltd. v. Gopali & Ors., Civil Appeal No.5179 of 2012 (arising out of SLP (C) No.11345 of 2007) decided by the Supreme Court on 05.07.2012, the New India Assurance Co. Ltd. challenged an award of compensation of ₹6,45,300/-. The compensation was, however, enhanced to ₹10,63,040/- by the Supreme Court."*

19. Thus, there is no impediment in enhancing the compensation awarded to Respondent no.1.

20. The enhanced compensation of ` 2,64,409/- shall carry interest at the rate of 7.5% per annum from the date of filing of the petition till the date of deposit with the Claims Tribunal and the same shall be deposited within a period of six weeks.

21. If the compensation is not deposited within six weeks, it shall carry interest at the rate of 12% per annum from the date of this judgment.

22. 50% of the enhanced compensation shall be held in Fixed Deposit for a period of six years on which Respondent no.1 shall be entitled to quarterly interest; rest of the compensation shall be released on deposit. The compensation already awarded by the Claims Tribunal shall be released/held in a Fixed Deposit in terms of the order passed by the Claims Tribunal.

23. The appeal stands disposed of.

24. Statutory amount of ` 25,000/-, if any, shall be refunded to the appellant Insurance Company on deposit of the enhanced compensation.

(G.P. MITTAL)
JUDGE

JANUARY 22, 2015
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