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

% *Date of Decision : 1st September, 2015*

\+ **MAC.APP. 447/2008**

THE NEW INDIA ASSURANCE CO.LTD. ..... Appellant
Through: Mr.Pankaj Seth, Advocate.

versus

SHRI RAJ KUMAR @ RAJU, THR. LRS, & ORS ..... Respondents
Through: Mr.Ghansyham Singh, Advocate for R-1(i) to R-1(iv).

PRATIBHA RANI, J. (Oral)

MAC.APP.No.447/2008

1. The present appeal has been preferred by the appellant – The New India Assurance Company Ltd. challenging the award dated 08.04.2008 whereby a compensation of Rs.8,61,500/- with interest @ 7% per annum has been awarded to the injured Raj Kumar for the injuries suffered by him in the accident.

2. In brief, the facts of the case are that on 20.05.2001 the injured Raj Kumar was returning from his office at Pusa Road on his Scooter No.DL-9S-F-1177 and going to his house at Budh Nagar. When he reached Rattan Puri Chowk near DTC bus Stand, he was hit by offending vehicle No.DL-8C-B-8701 from behind due to which he fell down on the road and sustained injuries. In the accident, the petitioner suffered 33% permanent disability due to the crush injury suffered by him in right thigh, residual scaring inner thigh with gross restriction of ROM at right ankle.

3. The petitioner filed petition under Section 166 & 140 of M.V. Act

seeking compensation of ₹3,37,900/- Vide award dated 08.04.2008 the Tribunal awarded a total compensation of Rs.8,61,504/- under the following heads:

(i)	Compensation on account of pain and sufferings	-	Rs.40,000/-
(ii)	Compensation on account of medicines, medical treatment, conveyance and special diet	-	Rs,30,000/-
(iii)	Compensation on account of permanent disability and loss of income.	-	Rs.7,41,504/-
(iv)	Compensation on account of physical disfigurement	-	Rs.25,000/-
(v)	Compensation on account of loss of enjoyment and amenity of life	-	Rs.25,000/-
	TOTAL	-	Rs.8,61,504/-

4. Since the offending vehicle was insured with The New India Assurance Company Ltd. i.e. the appellant herein, the insurance company was directed to pay the award amount of Rs.8,61,500/- (inclusive of interim compensation of Rs.25,000/-) with interest @ 7% per annum.

5. Feeling aggrieved by the award passed by the Tribunal, the insurance company preferred this appeal. It may be noted here that during the pendency of the appeal, the injured/respondent No.1 herein namely Raj Kumar @ Raju has expired and his legal heirs namely Smt.Geeta Sharma, Gautam, Gaurav and Vaishali have been impleaded as Respondent No.1(i) to (iv).

6. During the course of hearing, learned counsel for the appellant has submitted that the award has been challenged mainly on the ground that while computing the loss of earning capacity, as the injured had suffered 33% permanent disability in the accident, 1/3rd of the monthly income has not been deducted by the learned Tribunal. Learned counsel for the appellant has submitted that this contention has also been recorded in the proceedings dated 15.01.2009. Hence, the limited prayer in this appeal is that 1/3rd of the income i.e. Rs.2,47,168/- (1/3rd of Rs.7,41,504/-) should be deducted from the award amount.

7. I have considered the submissions made on behalf of the appellant and carefully gone through the record. In paras 16 and 17 while awarding compensation on account of permanent disability and loss of income, the learned Tribunal has noted that :-

> *'16. Petitioner also stated that he was in government service at the time of accident and was getting salary of Rs.11,703/- per month. Petitioner has placed on record his salary slip Ex.CW1/J.*
>
> *17. The petitioner has suffering disability of 33%. Taking the disability to be 33%, the monthly loss of income comes to Rs.3,862/- per month or Rs.46,344/- per annum. The injured was aged about 40 years at the time of accident. Therefore, the multiplier of 16 would be appropriate. Thus taking the multiplier of 16, the compensation comes to Rs.46,344/- X 16 = Rs.7,41,504/-. Permanent disability has many faces. Besides suffering loss of income the petitioner also undergoes a feeling of untold mental pain and agony and is unable to carry out the day to day functions. It also results in physical disfigurement of the injured. I consider that on this account also a sum of Rs.25,000/- is to be awarded to the petitioner on account of permanent disfigurement.'*

8. The grievance of the appellant/insurance company is that 1/3rd of the monthly income should have been deducted towards personal expenses of

the injured. It has also been submitted by learned counsel for the appellant that the injured in this case was a government servant and he did not suffer any loss in his earning despite the fact that he suffered 33% permanent disability.

The contention raised by the appellant that the Tribunal should have deducted 1/3rd of the monthly income towards personal expenses needs to be rejected for the reason that it was not a death case. The injured suffered injuries in the accident and had died only during pending of the present appeal. In the case of *Sarla Verma vs. Delhi Transport Corporation, 2009 (6) Scale 129* the Hon'ble Supreme Court laid down the following principles with regard to deduction towards personal and living expenses for grant of compensation in death cases:-

'I. DEDUCTION FOR PERSONAL AND LIVING EXPENSES:

Deceased – unmarried

(i)	*Deduction towards persons expenses*	-	*1/2 (50%)*
(ii)	*Deduction where the family of the bachelor is large and dependent on the income of the deceased.*	-	*1/3rd (33.33%)*

Deceased – married

(i)	*2 to 3 dependent family members*	-	*1/3rd*
(ii)	*4 to 6 dependent family members*	-	*1/4th*
(iii)	*More than 6 family members*	-	*1/5th*
(iv)	*Subject to the evidence to the contrary*	-	*Father, brother and sisters will not be considered as dependents.'*

9. In this case, the injured himself has filed the claim petition and

compensation has been awarded to the injured so no deduction was required to be made towards personal expenses. The learned Tribunal while awarding compensation on account of suffering disability to the extent of 33% had taken into account the effect of permanent disability suffered by a person not only in professional life but also in personal life, so no interference is warranted by this Court on this count.

10. The appeal has not merit and the same is dismissed.

11. Since the injured/respondent No.1 has expired during the pendency of the appeal and his legal heirs namely Smt.Geeta Sharma – wife, Gautam & Gaurav – both sons and Vaishali – daughter have been brought on record as respondents No.1(i) to (iv), it is directed that award amount alongwith interest accrued thereon be released to the respondents No.1(i) to (iv) in the following manner:-

(i)	Respondent No.1(i) Smt.Geeta (wife)	-	40% of award amount
(ii)	Respondent No.1(ii) Gautam (son)	-	20% of award amount
(iii)	Respondent No.1(iii) Gaurav (son)	-	20% of award amount
(iv)	Respondent No.1(iv) Vaishali (daughter)	-	20% of award amount

12. The statutory amount of ₹25,000/- deposited at the time of filing of the appeal, shall be released in favour of the appellant/insurance company.

Copy of the order be given dasti to learned counsel for the parties.

CM No.15588/2015 (Modification)

Dismissed as infructuous.

PRATIBHA RANI, J.

SEPTEMBER 01, 2015
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