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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 29th January, 2015

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MAC.APP. 905/2012 & CM No.14371/2012 (stay)

NEW INDIA ASSURANCE CO. LTD. Appellant
Through: Mr. Sameer Nandwani, Advocate.

versus

DEEPAK AGGARWAL & ORS Respondents
Through: Mr. Satish Kumar, Advocate for
Respondent No.1.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

G. P. MITTAL, J. (ORAL)

1. The appeal is directed against the judgment dated 28.4.2012 passed by the Motor Accidents Claims Tribunal (the Claims Tribunal) whereby compensation of Rs.10,21,876/- was awarded by the Claims Tribunal in favour of Respondent no.1 for having suffered injuries and multiple fractures in both of his legs resulting in 45% disability in respect of left lower limb in a motor vehicular accident which occurred on 14.10.2010. The compensation awarded by the Claims Tribunal under various heads is tabulated hereunder:-

SR. NO.	HEADS OF COMPENSATION	AMOUNT
1.	Medical expenses	Rs.36,000/-
2.	Special diet & conveyance	Rs.36,000/-

3.	Attendant charges	Rs.60,000
4.	Loss of income	Rs.77,376/- (6448 x 12)
5.	Loss of future income (Age= 20 years)	Rs.4,87,500/- (6448 x 12 x 35% x 18)
6.	Marriage prospects	Rs.1,00,000/-
7.	Pain & suffering	Rs.75,000/-
8.	Loss of amenities	Rs.75,000/-
9.	Loss of life expectancy	Rs.75,000/-
	Total:	Rs.10,21,876/-

2. Relying on the judgment of *Raj Kumar v. Ajay Kumar & Anr.*, 2011 (1) SCC 343, it is urged by learned counsel for the Appellant Insurance Company that the Claims Tribunal erred in taking functional disability to the extent of 35%. The learned counsel urges that the functional disability ought to have been taken as 23% only. It is further contended that compensation of Rs.75,000/- each towards pain and suffering, loss of amenities and loss of life expectancy is on the higher side. It is also urged that there was no evidence to show that Respondent no.1 is a skilled worker as his driving licence was not proved.

3. On the other hand, the learned counsel for Respondent no.1 supports the impugned award and submits that the compensation

awarded is just and reasonable.

4. I have the trial court record before me. Immediately after the accident, Respondent no.1 was removed to Lok Nayak Jai Prakash Narain Hospital where he remained admitted from 14.10.2010 to 15.2.2011. He was advised bed rest and was readmitted in hospital on 25.3.2011 and was discharged on 4.4.2011. Respondent no.1 underwent several surgeries during the period of his admission.

5. In his examination-in-chief by way of Affidavit, Ex.PW1/A, Respondent no.1 testified about his job as a sales agent who was supplying goods to various shopkeepers. Although, certificates issued by the employers New Raj Telecom and Paras Paints & Hardware were placed on record, the same were disbelieved in the absence of any documentary evidence with regard to his employment with New Raj Telecom and Paras Paint & Hardware. The driving licence Ex.PW1/14 was, however, duly proved. The Claims Tribunal was therefore, justified in taking the income of Respondent no.1 as minimum wages of a skilled worker.

6. In *Raj Kumar (supra)*, the Supreme Court laid down that in cases of permanent disability, the Claims Tribunal/Court must assess the functional disability to award compensation for loss of earning capacity. Although, Respondent no.1's income and employment with New Raj Telecom and Paras Paints & Hardware was not proved in the absence of any documentary evidence with these employers, but I am inclined to believe Respondent no.1 that he was carrying out the job of supplying goods on a vehicle. Thus, he was expected to drive a vehicle in connection with supply of goods. The Claims Tribunal

assessed the functional disability to the extent of 35%, which considering the nature of job appears to be justified.

7. Respondent no.1 on the date of accident was a young person aged 21 years. He remained admitted in the hospital for a long time and had to undergo several surgeries. He suffered multiple fractures in both of his legs and ultimately suffered permanent disability to the extent of 45% in respect of his left lower limb. The compensation of Rs.75,000/- each towards pain and suffering, loss of amenities and loss of life expectancy cannot be said to be excessive and exorbitant.

8. The appeal, therefore, has to fail. The same is accordingly dismissed.

9. By an order dated 12.09.2012, 50% of the award amount was ordered to be deposited. Balance 50% amount along with interest @ 9% per annum from the date of filing of the petition till the date of deposit shall be deposited with the Claims Tribunal within four weeks failing which Respondent No.1 shall be entitled to interest @ 12% per annum from the date of this judgment.

10. Pending applications stand disposed of.

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

(G.P. MITTAL)
JUDGE

JANUARY 29th, 2015
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