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

Decided on: 26th March, 2015

\+ **MAC.APP. 1033/2012**

ORIENTAL INSURANCE CO. LTD.
..... Appellant
Through: Mr.A.K. Soni, Advocate

versus

BASANT & ORS ..... Respondents
Through: Mr. S.N. Parashar, Advocate for Respondent no.1

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

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The appeal is for reduction of compensation of Rs.25,18,246/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of Respondent no.1 for having suffered injuries in a motor vehicular accident which occurred on 30.12.2010.

2. The compensation awarded by the Claims Tribunal is tabulated hereunder:

Sl. No.	**Compensation under various Heads**	**Awarded by the Claims Tribunal (in Rs.)**
1.	Medical Expenses	1,39,246/-
2.	Future Medical Expenses	50,000/-
3.	Special Diet	25,000/-
4.	Conveyance Charges	30,000/-
5.	Attendant Charges	21,000/-
6.	Loss of Income	1,20,000/-
7.	Loss of Future Income	16,83,000/-
8.	Pain & Mental Agony	1,50,000/-
9.	Loss of Amenities and Shortening of Life	2,00,000/-
10.	Deformity	1,00,000/-
	TOTAL	**25,18,246/-**

3. Immediately after the accident, Respondent no.1 was removed to Sanjay Gandhi Memorial Hospital. Respondent no.1 was found to have suffered compound fracture of left femur and

both bone of left leg. He was given blood. Respondent's family was not happy with the treatment received at Sanjay Gandhi Memorial Hospital and so Respondent no.1 was shifted to Dhruv Surgical Centre being run by Dr. Rajan Atreja(PW-3). Respondent no.1 was operated upon and was discharged from Dhruv Surgical Centre after ten days. He remained an outdoor patient and remained under treatment till July, 2011.

4. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of motorcycle no.DL-8-SAT-2356 driven by Respondent no.2 and owned by Respondent no.3. The Claims Tribunal proceeded to award the compensation as has been extracted in para 2 above.

5. Following contentions are raised on behalf of the Appellant Insurance Company:

(i) The Claims Tribunal took salary of Respondent no.1 to be Rs.10,000/- per month without any proof of income and made addition of 50% towards future prospects without any evidence in this regard;

(ii) There was no evidence of loss of income for twelve months; the Claims Tribunal was not justified in granting a compensation of Rs.1,20,000/- towards loss of income for one year;

(iii) The compensation towards pain and suffering, loss of amenities and deformity is on the higher side;

(iv) Interest @ 12% per annum granted by the Claims Tribunal is exorbitant and excessive; and

(v) The award of Rs.21,000/- towards counsel's fee and Rs.4,000/- towards out of pocket expenses is illegal.

6. On the other hand, Mr. S.N. Parashar, the learned counsel for Respondent no.1 supports the impugned judgment and submits that the award of compensation is just and reasonable. It is urged by him that Respondent no.1 has suffered 55% physical impairment in relation to his left lower limb on account of restricted range of motion of hip, knee and ankle joint with difficulty in activities of daily living. There is another Medical Certificate prior to the issuance of Medical Certificate dated

02.04.2012 issued by Dr. Baba Saheb Ambedkar Hospital which assessed the permanent disability to the extent of 68%.

<u>LOSS OF EARNING CAPACITY</u>:

7. In the claim petition, Respondent no.1 has given his income from the profession of meat sale as Rs.10,000/- per month. He claimed a compensation of Rs.7,00,000/-, which is extracted hereunder:

"VIII. The petitioner is entitled to recover the following amount of compensation from the respondents with their joint and vicarious responsibility and liability to pay:

a)	*Medical Expenses*	*Rs.2,00,000/-*
b)	*Loss of Income*	*Rs.60,000/-*
c)	*Loss of Health*	*Rs.2,00,000/-*
d)	*Conveyance Charges*	*Rs.20,000/-*
e)	*Special Diet*	*Rs.20,000/-*
f)	*On account of operation to be operated in future for putting steal rod and removal of the same*	*Rs.1,00,000/-*
	On account of Mental Pain and Agony	*Rs.1,00,000/-*
		Rs.7,00,000/-"

8. There is no gainsaying that the Claims Tribunal is competent to award compensation more than claimed by the victim in a motor vehicular accident. Although doctor was not examined by Respondent no.1 to prove the functional disability suffered by him, however, from the Medical Certificate Ex.PX dated 02.04.2012, it can be inferred that Respondent no.1's earning capacity on account of restricted range of motion of hip, knee and ankle joint, will be substantially reduced. The Claims Tribunal was therefore, justified in granting loss of earning capacity to the extent of 55% which was disability assessed in relation to left lower limb. Respondent no.1 filed an Affidavit of his brother Puran Mal who testified that Respondent no.1 was working as a helper at his shop and was being paid Rs.10,000/- per month. Respondent no.1 has studied upto higher secondary (Ex.PW1/16). Respondent no.1 did not produce any evidence with regard to his total income from the shop. Thus, the Claims Tribunal ought to have awarded compensation to Respondent no.1 on the basis of minimum wages of a matriculate which was

Rs.6,448/- on the date of the accident.

9. As far as addition towards future prospects is concerned, the question was dealt with by a three Judge Bench decision of the Supreme Court in *Reshma Kumari & Ors. v. Madan Mohan & Anr., (2013) 9 SCC 65* and it was held that addition towards future prospects is to be made only when there is specific evidence in this regard. The question of grant of future prospects was dealt with by this Court at great length in *HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi and Ors. MAC APP No. 189/ 2014* decided on 12.01.2015, wherein it was held that the three Judge Bench decision in *Reshma Kumari & Ors.(supra)* shall be taken as a binding precedent. Thus, in the absence of any evidence of good future prospects, no addition towards future prospects ought to have been made by the Claims Tribunal. The loss of earning capacity therefore, comes to Rs.7,23,465/-(Rs.6,448/- x 12 x 17 x 55%).

LOSS OF INCOME:

10. No evidence was led by Respondent no.1 to show the period during which he could not attend his work. The documents

placed on record, however, reveal that he received treatment till July, 2011. Considering the nature of injuries suffered and the permanent disability sustained by Respondent no.1, I will take the loss of income to the extent of seven months which comes to Rs.45,136/-(Rs.6,448/- x 7).

11. Considering the treatment received by Respondent no.1 in Sanjay Gandhi Memorial Hospital and thereafter, in Dhruv Surgical Centre, the surgeries underwent and the nature of injuries suffered and the fact that Respondent no.1 is crippled for his life and he will face difficulty in running, walking, squatting and carrying out his day to day activities, compensation of Rs.1,50,000/- towards pain and suffering cannot be said to be excessive or exorbitant.

LOSS OF AMENITIES, DEFORMITY & LOSS OF MARRIAGE PROSPECTS

12. In *Raj Kumar v. Ajay Kumar & Anr., 2011 (1) SCC 343,* it was laid down by the Supreme Court that whenever any compensation for 50% or more loss of earning capacity is granted, the compensation towards loss of amenities and

enjoyment in life should be nominal otherwise it will amount to duplication of the award of the compensation. The compensation of Rs.2,00,000/- awarded towards loss of amenities is therefore, liable to be reduced to Rs.50,000/-. At the same time, I tend to award a sum of Rs.1,50,000/- towards deformity and loss of marriage prospects against the sum of Rs.1,00,000/- as awarded by the Claims Tribunal.

13. The overall compensation is recomputed hereunder:

Sl. No.	**Compensation under various Heads**	**Awarded by the Claims Tribunal (in Rs.)**	**Awarded by this Court (in Rs.)**
1.	Medical Expenses	1,39,246/-	1,39,246/-
2.	Future Medical Expenses	50,000/-	50,000/-
3.	Special Diet	25,000/-	25,000/-
4.	Conveyance Charges	30,000/-	30,000/-
5.	Attendant Charges	21,000/-	21,000/-
6.	Loss of Income	1,20,000/-	45,136/-
7.	Loss of Future Income	16,83,000/-	7,23,465/-
8.	Pain & Mental Agony	1,50,000/-	1,50,000/-
9.	Loss of Amenities and Shortening of Life	2,00,000/-	50,000/-

10.	Deformity & Loss of Marriage Prospects	1,00,000/-	1,50,000/-
	TOTAL	**25,18,246/-**	**13,83,847/-**

14. The compensation is therefore, reduced from Rs.25,18,246/- to Rs.13,83,847/-.

15. The Claims Tribunal awarded interest @ 12% per annum. This accident occurred on 30.12.2010. Rate of interest had considerably fallen since then hence, award of interest @ 12% per annum is on the higher side. The same is reduced to 8% per annum from the date of filing of the claim petition till the deposit of the award amount.

<u>COUNSEL' FEE</u>:

16. As far as award of a sum of Rs.21,000/- towards counsel's fee and Rs.4,000/- towards out of pocket expenses is concerned, this Court in *ICICI Lombard General Insurance Co. Ltd. v. Kanti Devi and Ors. MAC APP No. 645/ 2012 decided on 30.07.2012* had gone into the question of granting counsel's fee and concluded in Para 32 as under:

"32. To sum up, it is directed:-

(i) The Claims Tribunal is empowered to award costs in a Claim Petition in terms of Section 35 read with Order XXA of the Code.

(ii) The Claims Tribunal is entitled to award the Counsel's fee in accordance with Rule 1 read with Rule 1A and Rule 9 of Chapter 16 Volume I of the Rules extracted earlier.

(iii) In case of compromise/settlement of the claims, the Claims Tribunal is not entitled to go beyond the settlement reached between the parties. If the settlement does not provide for payment of any Counsel's fee, it shall not be within the domain of the Claims Tribunal to award the Counsel's fee.

(iv) If the compensation is awarded on the basis of DAR in pursuance of the legal offer made by the Insurer, the Claims Tribunal is not empowered to award any costs unless it forms part of the legal offer.

(v) The counsel fee can be directly paid to the counsel only when a specific agreement is filed and the Claimant requires payment of fee directly to the counsel because only then the Claimant would be liable to reimburse the fee or part thereof in case the award is set aside or varied.''

17. It was thus, concluded that instead of awarding counsel's fee, the claim petition ought to be allowed with costs and counsel's fee be paid only in accordance with Rules 1, 1A and 9 of Chapter 16, Vol. I of the Delhi High Court Rules and Orders.

Thus, award of compensation of Rs.21,000/- towards counsel's fee and Rs.4,000/- towards out of pocket expenses was not permissible.

18. By an order dated 14.09.2012, only 30% of the award amount along with proportionate interest was ordered to be deposited with UCO Bank, Delhi High Court Branch, New Delhi. The amount of compensation awarded along with interest @ 8% per annum shall be recalculated and the balance amount along with interest shall be deposited in UCO Bank, Delhi High Court Branch, New Delhi in the name of Respondent no.1 by the Appellant Insurance Company within six weeks.

19. A sum of Rs.3,00,000/- was ordered to be released in favour of Respondent no.1 by an order dated 16.10.2012. Another sum of Rs.1,00,000/- shall be released to Respondent no.1 on deposit. Balance amount shall be held in Fixed Deposit for a period of three and six years in equal proportion on which Respondent no.1 shall be entitled to get quarterly interest.

20. The appeal is allowed in above terms.

21. Pending applications also stand disposed of.

22. Statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company after depositing the balance amount and filing a certificate of compliance of the judgment.

(G.P. MITTAL)
JUDGE

MARCH 26, 2015
pst