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

Date of decision: 09th January, 2015

+ **MAC. APP. No.1108/2012**

RELIANCE GENERAL INSURANCE CO. LTD.

..... Appellant

Through: Mr. A.K. Soni, Advocate

Versus

RAJESH & ORS.

.....Respondents

Through: Mr. S.S. Sisodia, 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. This appeal is directed against the judgment dated 18.08.2012 whereby compensation of Rs.7,97,137 was awarded by the Motor Accident Claims Tribunal(the Claims Tribunal) in favour of Respondent no.1 for having suffered serious injuries resulting in amputation of his right arm elbow in an accident which occurred on 22.11.2009 at 11:00 p.m. while

Respondent no.1 was returning after attending a marriage in Village Bagampur Khatola, Distt. Gurgaon.

2. The Claims Tribunal computed the compensation as under:

S.No.	Head of Compensation	Granted by the Claims Tribunal
1.	Treatment Expenses	Rs.7,012/-
2.	Pain & Suffering	Rs.25,000/-
3.	Conveyance & Special Diet	Rs.5,000/-
4.	Compensation on account of disability	Rs.7,10,125/-
5.	Loss of enjoyment of life & amenities of life	Rs.50,000/-
	Total	Rs.7,97,137/-

3. Immediately after the accident, Respondent no.1 was removed to Artemis Medicate Services Pvt. Ltd., Gurgaon. On the next day *i.e.* 23.11.2009, he was then shifted to Safdarjung Hospital, New Delhi. Below amputation of right arm was carried out under general anesthesia on 01.12.2009. Respondent no.1 was discharged from the Hospital on 03.12.2009. He remained an outdoor patient in Safdarjung Hospital for about two months. A disability certificate Ex.PW1/1 was issued stating that Respondent no.1 has suffered permanent disability to the extent of 65% in respect of his upper right limb.

4. The Claims Tribunal awarded a compensation of Rs.7,012/- in respect of the expenditure on medicines on the basis of bills which were placed on record, Rs.5,000/- towards conveyance and special diet, Rs.25,000/- towards pain and suffering and Rs.50,000/- towards loss of enjoyment and loss of amenities in life, apart from the compensation of Rs.7,10,125/- towards loss of earning capacity.
5. Mr. A.K. Soni, the learned counsel for the Appellant Insurance Company urges that although Respondent no.1 had claimed in the claim petition that he was working as a driver, yet there was not an iota of evidence produced by the claimant to show that he was working as a driver. It is urged that the Claims Tribunal erred in making an addition of 30% while computing the loss of earning capacity.
6. I have perused the Affidavit Ex.PW2/A sworn by Respondent no.1. He was completely silent that he was working as a driver. He has not given the name of the employer. Thus, it is difficult to believe that Respondent no.1 was employed as a driver.
7. The learned counsel for Respondent no.1 while defending the impugned award submits that even if addition of 30% is not made in the minimum wages as taken by the Claims Tribunal, the overall compensation awarded cannot be said to be excessive or exorbitant as the compensation

towards pain and suffering, conveyance and special diet and loss of enjoyment and loss of amenities is on the lower side.

8. It is not in doubt that Respondent no.1 lost his right forearm which will definitely affect his functional capacity to earn, particularly when Respondent no.1 claimed to be a driver although he failed to adduce any evidence in this regard. Even if Respondent no.1 is taken as a menial worker, loss of earning capacity in case of amputation of right forearm below elbow can definitely be taken to be 65%. Loss of earning capacity on the minimum wages of a skilled workman will come to Rs.5,46,249/- (Rs.4,377/- x 12 x 16 x 65%).
9. Respondent no.1 was initially hospitalized in Artemis Medicate Services Pvt. Ltd., Gurgaon and then he was shifted to Safdarjung Hospital where he remained an indoor patient for a period of 11 days. As stated earlier, Respondent no.1 remained an outdoor patient for a period of about two months in Safdarjung Hospital. I agree with the contention of learned counsel for Respondent no.1 that the compensation awarded towards pain and suffering, loss of enjoyment of life and loss of amenities in life as also disfigurement was on the lower side. Accordingly, the compensation is recomputed as under:

S.No.	Head of Compensation	Compensation granted by this Court
1.	Treatment Expenses	Rs.7,012/-
2.	Pain & Suffering	Rs.50,000/-
3.	Conveyance & Special Diet	Rs.10,000/-
4.	Compensation on account of disability	Rs.5,46,249/-
5.	Loss of enjoyment of life & amenities of life and disfigurement	Rs.1,50,000/-
	Total	Rs.7,63,261/-

10. In view of the compensation awarded, the compensation awarded by the Claims Tribunal cannot be said to be excessive or exorbitant.
11. The appeal is devoid of any merit; the same is accordingly dismissed.
12. Pending applications, if any, also stands disposed of.
13. The amount deposited shall be released/held in Fixed Deposit in terms of the orders passed by the Claims Tribunal.
14. The statutory amount of Rs.25,000/- shall also be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

JANUARY 09, 2015
pst