**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO No. 422 of 2013 (O&M)
Date of decision: 25.05.2016**

National Insurance Company Limited
... Appellant
versus
Nasirudeen @ Mangat Khan and another
.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Neeraj Khanna, Advocate for the appellant.

Mr. Amandeep Kaur, Advocate Amicus Curiae.

K.Kannan, J. (ORAL)

The appeal is against the assessment to compensation for amputation of leg suffered by the complainant in an accident. It was a schedule injury under the WC Act and constituted 72% loss of earning capacity. The Tribunal lowered the assessment as made by the Doctor to 55% as the functional disability of the limb and proceeded to assess the compensation. He was engaged in the avocation of preparing mats and carpets and stated that he had a income of about Rs. 15,000/-. He stated in his evidence that he has associated his son in his business and after the accident the business was still being run and the income was reduced to Rs. 10,000 -Rs. 12,000/-. The Tribunal however took the income as stated by him to be the basis and applied 55% as constituting the loss of earning capacity and assessed Rs. 12,85,000/- as the loss of future earning. It also provided for Rs. 8,000/- for special diet, Rs. 5,000/- for transportation charges, Rs. 38,736/- for medical expenses. The Tribunal also provided Rs. 15,000/- for pain and suffering.

The learned counsel for the insurer would argue that on the basis of evidence given that the income had reduced from Rs. 10,000 -12,000/-, the loss of income must have been taken only as Rs. 3,000/- and loss of earning capacity must have been determined on such basis. I shall not be able to agree to this argument for in a normal situation, the son's association in the business could have meant greater productivity and higher income. If on account of injury there has been a reduction of total income it will be wrong to merely take the income brought by the son as income of the claimant himself and take merely the difference between the income earned by the claimant and the income assessed by the son in the business will alone constitute the loss of earning capacity. The Court was justified in taking the income as given by the petitioner as reasonable and indeed the Tribunal had taken merely 55% as constituting the loss of earning capacity. In Raj Kumar Vs. Ajay Kumar and another, 2011 (1) Accident Claims Journal (1), the Hon'ble Supreme Court actually observed that it is possible for a Court to apply even a lower percentage if the actual earning was in any way impaired by the disability to the extent to which the actual functional disability was assessed. The Court made reference to this judgment as well and had reduced to 75% disability to 55%. It may not really be scientific to make the reduction the way Tribunal has done but atleast I am prepared to believe that the insurer cannot complaint that the Tribunal has provided more than what was just and adequate. In the given situation, there are several decisions of the Supreme Court which allow for the component of pain and suffering in cases of amputation to be in the range of Rs. 75,000/- (Syed Sadiq Vs. Divisional Manager, United India Insurance 2014 4 SCC (Criminal) 607) and Rs. 2,00,000/- (as in M. D Jacob Vs. United India Insurance Limited 2014 9 SCC 234). The Tribunal has not actually even assessed the loss of amenity which again has been in the range of Rs. 75,000 as provided for independently (as in Syed Sadiq's case (supra)) to Rs.

3,50,000/- in (Dinesh Singh Vs. Bajaj Allianz General Insurance Company Limited in 2014 (5) SCC Criminal 26). The said sums have not been awarded. The overall compensation assessed at Rs. 13,53,726/- cannot be stated to be high for intervention.

I value the services of the *amicus curiae* who helped me address the issue for the respondent who has remained ex-parte. I direct a remuneration of Rs. 10,000/- to be paid for *amicus curiae* from the Amicus Curiae Fund.

The award is affirmed and the appeal is dismissed.

(K.KANNAN)
JUDGE

25.05.2016
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