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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ MAC.APP. 122/2017 & CM No.4591/2017

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

Versus

INDER PAL SINGH & ORS. Respondents
Through: Mr. Dwapayam Gupta, Advocate for
Respondent No.1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

22.05.2017

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1. The appellant has impugned the grant of compensation to the respondent on the ground that although there is a permanent disability of 45%, the Tribunal has assessed 100% disability and computed the compensation accordingly.
2. The facts are that in a motor vehicle accident dated 08.04.2011, its driver/respondent No.1, who was licensed to drive a commercial vehicle, was incapacitated rendering him permanently disabled and incapable of ever driving a vehicle. The law in this regard is clear that the disability apropos the vocation would have to be examined. Accordingly, applying the dicta of ***Raj Kumar Vs. Ajay Kumar, & Anr, 2011 Volume 1, ACJ 1***, the Tribunal had computed the permanent disability of 45% as 100% in relation to the functional disability. While doing so, the Tribunal also considered the Certificate issued by the Medical Board, BSA Hospital, New Delhi, which assessed the disability of respondent No. 1 as 45% with respect to his right

lower limb and the letter dated 18.02.2015 issued by the MLO Transport Department, Government of Delhi, which declined the renewal of respondent no.1's driving license on account of his inability to drive the vehicle due to shortening of his right leg on account of the accident.

3. Insofar as the renewal of driving license itself has been denied by the statutory authority, there is a permanent disability apropos the vocation the respondent was pursuing.

4. In ***R.D. Hattangaddi Vs. Pest Control (India) Pvt. Ltd. & Ors.*** 1995 SCC (1) 755, the Supreme Court held that:

"Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit upto the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk run or sit; (iii) damages for the loss of expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment frustration and mental stress in life."

5. In ***K. Narasimha Murthy Vs. The Manager, Oriental Insurance Company Ltd. And Anr.***, 2004 ACJ 1109 it was held that:

“The Courts and Tribunals, in bodily injury cases, while assessing compensation, should take into account all relevant circumstances, evidence, legal principles governing quantification of compensation. Further, they have to approach the issue of awarding compensation on the larger perspectives of justice, equity and good conscience and eschew technicalities in the decision-making. There should be realisation on the part of the Tribunals and Courts that the possession of one's own body is the first and most valuable of all human rights, and that all possessions and ownership are extensions of this primary right, while awarding compensation for bodily injuries. Bodily injury is to be treated as a deprivation which entitles a claimant to damages. The amount of damages varies according to gravity of injuries. Deprivation sustained as a consequence of bodily injuries may bring with it three consequences, namely, (i) loss of earning and earning capacity, (ii) expenses to pay others for what otherwise he would do for himself, and (iii) loss or diminution in Ml pleasures and joys of living. Though it is impossible to equate money with human suffering, agony and personal deprivation, the Tribunals and Courts should make an honest and serious attempt to award damages so far as money can compensate the loss. Loss of curing and earning should adequately be compensated. Therefore, while considering deprivation, the Tribunals and Courts should have due regard to the gravity and degree of deprivation as well as the degree of awareness of the deprivation. It is trite, in awarding damages in personal injury cases, the compensation awarded by the Court should be substantial, it should not be merely token damages.”

6. In ***Nizam's Institute of Medical Sciences v. Prasanath S. Dhananka*** 2009 (6) SCC 1, the Supreme Court held that:

"We must emphasize that the Court has to strike a balance between the inflated and unreasonable demands of a victim

and the equally untenable claim of the opposite party saying that nothing is payable. Sympathy for the victim does not, and should not, come in the way of making a correct assessment, but if a case is made out, the Court must not be chary of awarding adequate compensation. The "adequate compensation" that we speak of, must to some extent, be a rule of the thumb measure, and as a balance has to be struck, it would be difficult to satisfy all the parties concerned. It must also be borne in mind that life has its pitfalls and is not smooth sailing all along the way (as a claimant would have us believe) as the hiccups that invariably come about cannot be visualized. Life it is said is akin to a ride on a roller coaster where a meteoric rise is often followed by an equally spectacular fall, and the distance between the two (as in this very case) is a minute or a yard. At the same time we often find that a person injured in an accident leaves his family in greater distress, vis-a-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity. We can also visualize the anxiety of the complainant and his parents for the future after the latter, as must all of us, inevitably fade away. We, have, therefore computed the compensation keeping in mind that his brilliant career has been cut short and there is, as of now, no possibility of improvement in his condition, the compensation will ensure a steady and reasonable income to him for a time when he is unable to earn for himself."

7. In ***Rekha Jain Vs. National Insurance Co. Ltd.***, 2013 ACJ 2161, it has been held that:

"41. In this regard, in Baker's case supra, it has been stated by Lord Reid that a man is not compensated for the physical injury; he is compensated for the loss which he suffers as a result of that injury. Therefore, the functional disability is a forceful alteration of career option of the Appellant who has already undergone physical and mental injuries because of the accident. It would amount to adding distress to injury if one is forced to work with difficulty to earn his/her livelihood so as to reduce the burden of the wrongdoer in terms of compensation."

8. In **Basavaraj Vs. Shekhar ILR 1987 1399**, the Division Bench of the Karnataka High Court held that:

"8.....If the original position cannot be restored - as indeed in personal injury or fatal accident cases it cannot obviously be - the law must endeavour to give a fair equivalent in money, so far as money can be an equivalent and so 'make good' the damage."

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26. Therefore, the general principle which should govern the assessment of damages in personal injury cases is that the Court should award to injured person such a sum of money as will put him in the same position as he would have been in if he had not sustained the injuries. But, it is manifest that no award of money can possibly compensate an injured man and renew a shattered human frame."

9. In the circumstances, no further evidence was required to establish that the respondent was permanently incapacitated from driving a motor vehicle.

10. In view of the above, this Court finds no reason to interfere with the impugned order. The appeal is devoid of merit, hence it is dismissed. The monies deposited shall be released to the beneficiary in terms of the Award. Of the statutory amount, Rs.10,000/- be refunded to the appellant and the balance Rs.15,000/- be released to respondent No.1 for the litigation expenses incurred in pursuing this appeal.

11. The pending application also stands disposed off.

NAJMI WAZIRI, J.

MAY 22, 2017

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