

\$~17 & 19

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

%

Date of Decision: 14th July, 2017

17

+ MAC APP.797/2014 & CM 14459/2014

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

versus

ROHIT KUMAR & ORS. Respondents
Through: Mr. Yogesh Swroop, Mr. Kapil K.
Kaushik, Advocates for respondent
no.1

19

+ MAC APP.764/2015 & CMs 22623-22624/2015

ROHIT KUMAR Appellant
Through: Mr. Yogesh Swroop, Mr. Kapil K.
Kaushik, Advocates

versus

RELIANCE GENERAL INSURANCE
CO. LTD. & ORS Respondents
Through: Mr. A. K. Soni, Advocate for
respondent no.1

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. Vide award dated 24th July, 2014, the Claims Tribunal has awarded Rs.18,76,950/- to Rohit Kumar. Both the parties have challenged the impugned award. The appellant in MAC APP.797/2014 is seeking reduction

whereas the appellant in MAC APP.764/2015 is seeking enhancement of the award amount.

2. On 3rd November, 2012, Rohit Kumar was returning home on foot from Sanya Vihar, Ghaziabad. When Rohit reached the divider on NH-24 in front of Sanya Vihar, a Tata container no.HR-38M-8702 came from Lal Kuan side and ran over his right leg. Rohit was taken to Yashoda Hospital, Ghaziabad where his right leg was amputated. Rohit was working as a Supervisor/Field Officer with Balaji Industries and Services and he claimed to be earning Rs.15,000/- per month.

3. The Claims Tribunal awarded Rs.41,772/- towards expenditure on treatment, Rs.15,000/- towards conveyance and special diet, Rs.17,628/- towards nursing attendant, Rs.1,50,000/- towards pain and sufferings, Rs.1,50,000/- towards loss of amenities and enjoyment of life, Rs.1,50,000/- towards disfiguration and Rs.75,000/- towards loss of marriage prospects. The Claims Tribunal took the functional disability of the injured to be 40% and awarded Rs.11,42,294/- by applying the multiplier of 18 and taking the functional disability as 40%. The total compensation awarded is Rs.18,76,950/-.

4. Learned counsel for the appellant in MAC APP.797/2014 urged at the time of the hearing that the future prospects should not be taken into consideration for computing the loss of earning capacity.

5. Learned counsel for the appellant in MAC APP.764/2015 urged at the time of the hearing that Rs.7 lakh be awarded for artificial limb fixed by M/s. Endolite India Limited by the order of this Court on 15th February, 2017. It is submitted that the Claims Tribunal has awarded only Rs.1 lakh for fixing of artificial limb. Learned counsel seeks enhancement of Rs.6

lakh under the head of fixing of artificial limb. It is further submitted that the Claims Tribunal has taken the loss of earning capacity as 40% whereas the loss of earning capacity is more than 50%.

6. The injured is present in Court and his condition has been seen. Considering the present condition of the injured, the loss of functional disability and earning capacity is increased from 40% to 50%.

7. The Claims Tribunal has taken the income of the deceased as the minimum wages of Rs.8,814/- and added 50% thereon. The appellant was working as a Supervisor/Field Officer at the time of the accident. This Court is of the view that since the occupation of the deceased had been proved as Supervisor/Field Officer, the income of the deceased can be safely presumed to be Rs.13,221/- per month. The law is well settled in this regard. It is not always necessary to resort to minimum wages to assume the income of the deceased. Reference be made to *Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy*, AIR 2012 SC 100 in which 59 persons died in *Uphaar tragedy* in 1997 and the Supreme Court granted compensation of Rs.10,00,000/- to the victims above 20 years of age by taking their income as Rs.8,333/- per month whereas the minimum wages at the relevant time were less than Rs.2600/-. Considering the nature of job of the injured, the income of the deceased is assumed to be Rs.13,221/- and no future prospects are added thereon. Applying the multiplier of 18 and taking the functional disability as 50%, the appellant/injured is entitled to loss of earning capacity of Rs.14,27,868/-. The Claims Tribunal has awarded only Rs.1 lakh for fixing of artificial limb, whereas the cost of artificial limb in this case is Rs.7 lakhs. The cost of artificial limb is enhanced from Rs.1 lakh to Rs.7 lakhs. The compensation awarded under the other heads is just, fair

and reasonable and does not warrant any interference. The appellant is entitled to total compensation of Rs.27,62,524/- as per breakup given hereunder:

- Expenses towards medical bills	Rs. 41,772/-
- Compensation towards conveyance and special diet	Rs. 15,000/-
- Compensation towards attendant charges for two months	Rs. 17,628/-
- Compensation towards prosthetic leg	Rs. 7,00,000/-
- Loss of earning for four months	Rs. 35,256/-
- Loss of future earning due to functional disability	Rs. 14,27,868/-
- Compensation towards pain and suffering	Rs. 1,50,000/-
- Loss of amenities and enjoyment	Rs. 1,50,000/-
- Compensation towards disfiguration	Rs. 1,50,000/-
- Loss of marriage prospects	Rs. 75,000/-
TOTAL COMPENSATION	<u>Rs. 27,62,524/-</u>

8. MAC APP.764/2015 is allowed and the compensation amount is enhanced from Rs.18,76,950/- to Rs.27,62,524/- along with interest @ 9% per annum from the date of the filing of the claim i.e. 4th March, 2013. MAC APP.797/2014 is dismissed.

9. Reliance General Insurance Company Limited has deposited Rs.21,40,751/- with the Registrar General of this Court in terms of order dated 3rd September, 2014 out of which 60% amount has already been released to the injured and the balance amount is lying in fixed deposit.

10. Reliance General Insurance Company Limited is directed to deposit the enhanced award amount with the Registrar General of this Court within four weeks.
11. List for disbursement of the award amount on 24th August, 2017.
12. The statutory amount be refunded back to the insurance company after deposit of the enhanced award amount.
13. The claimant shall remain present in Court on the next date of hearing along with the passbook of his savings bank account near the place of his residence as well as PAN card and Aadhar card.
14. The pending applications are disposed of.
15. Copy of this judgment be given *dasti* to counsel for the parties under the signature of the Court Master.

JULY 14, 2017
Dk

J.R. MIDHA, J.

भारतमेव जयते