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

% **Date of Decision: 08th May, 2017**

\+ MAC.APP. 441/2015

NEW INDIA ASSURANCE CO LTD ..... Appellant
Through: Ms.Raveesha Gupta, Adv. for Mr.Ravinder Singh, Adv.

versus

MANOJ KUMAR & ORS ..... Respondents
Through: Mr. S.N. Parashar, Adv. for R-1

\+ MAC.APP. 660/2016

MANOJ KUMAR ..... Appellant
Through: Mr. S.N. Parashar, Adv.

versus

NEW INDIA ASS CO LTD & ORS ..... Respondents
Through: Ms.Raveesha Gupta, Adv. for Mr.Ravinder Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T (ORAL)

1. The parties have challenged the award of the Claims Tribunal whereby compensation of Rs.17,59,148/- has been awarded to Manoj Kumar. The appellant in MAC.APP.441/2015 is seeking reduction whereas the appellant in MAC.APP.660/2016 is seeking enhancement of the award amount.

2. On 18th April, 2013 at about 6:50 PM, Manoj Kumar was hit by Maruti Car bearing DL-3C-BS-6867 at Raja Garden Chowk, Ring Road, Delhi which resulted in grievous injuries. Manoj Kumar

suffered type III open fracture of both bones of left leg 1/4th with massive comminution, comminuted fracture bimalleolar left ankle with type III SH physeal injury left distal femur with hypodermic shock with avulsion of extensor tendon. Manoj Kumar underwent three surgeries, first surgery on 19th April, 2013 in Maharaja Agrasen Hospital where he remained admitted from 19th April, 2013 to 25th April, 2013; second surgery at Safdarjung Hospital on 14th June, 2013 where he remained admitted from 13th June, 2013 to 24th June, 2013; and third surgery at District Hospital, Basti on 16th June, 2014 where he remained admitted from 11th June, 2014 to 4th July, 2014. The left leg of Manoj Kumar has been amputated below knee level and his permanent disability has been assessed by the Medical Board as 70% in respect of his left lower limb.

3. The Claims Tribunal took the loss of earning capacity of Manoj Kumar as 50% and awarded Rs.12,28,032/- towards loss of earning capacity by taking 50% of minimum wages of Rs.8,528/- per month, adding Rs.2,132/- towards future prospects and applying the multiplier of 16. The Claims Tribunal awarded Rs.2,04,672/- towards loss of income during treatment. The Claims Tribunal awarded Rs.1,50,000/- towards pain and suffering, Rs.50,000/- towards conveyance, attendant charges and special diet. Rs.1,26,444/- has been awarded towards medical expenses. The total compensation awarded is Rs.17,59,148/- along with interest @ 8% per annum from the date of petition i.e. 21st October, 2013.

4. Learned counsel for the appellant in MAC.APP.441/2015 seeks reduction of the awarded amount on the ground that the future prospects should not be taken into consideration for computing the loss of earning capacity. Learned counsel for the appellant submits

that the Claims Tribunal has awarded loss of income for 24 months whereas there was no proof of loss of income for the period 14th June, 2013 to 16th June, 2014.

5. Learned counsel for the appellant in MAC.APP.660/2016 seeks enhancement of the compensation on the ground of the multiplier be enhanced from 16 to 18 and the loss of earning capacity be taken as 70% instead of 50%. The appellant also seeks compensation under the heads of loss of amenities of life, disfiguration as well as loss of matrimonial prospects. The appellant also seeks compensation for fixing the artificial limb. It is submitted that during the pendency of this appeal, the artificial limb has been fixed on the appellant by M/s Endolite India Limited in terms of the order dated 01st December, 2016 for which a sum of Rs.98,500/- has been released to M/s Endolite India Limited out of the award amount deposited by the Insurance Company. The appellant further seeks enhancement of rate of interest from 8% to 9% per annum.

6. The claimant, Manoj Kumar is present in Court along with his counsel and his condition has been seen. He has suffered amputation of left leg below knee level and his permanent disability has been assessed by the Medical Board as 70%. The appellant was working as a mason and is unable to do work due to the permanent disability. The functional disability of the appellant is taken as 70%. The Claims Tribunal has taken minimum wages of Rs.8,528/- per month, added 50% towards future prospects and applied the multiplier of 16 to compute the loss of earning capacity as Rs.12,28,032/-. The claimant was aged 20 years at the time of the accident and, therefore, the appropriate multiplier at the age of 20 is 18. This Court is of the view that it would be appropriate to take minimum wages of Rs.8,528/- into

consideration to compute the loss of earning capacity.

7. Taking the minimum wages of Rs.8,528/- per month as the income of the claimant, applying the multiplier of 18 and taking the functional disability as 70%, the loss of earning capacity is computed as Rs.12,89,434/. The compensation under the head of loss of earning capacity is enhanced from Rs.12,28,032/- to Rs.12,89,434/-. The loss of income during treatment is reduced from Rs.2,04,672/- to Rs.1,02,336/- as there is no proof of loss of income for the second year.

8. The Claims Tribunal has not awarded any compensation for fixing an artificial limb. Vide order dated 30th November, 2016, this Court directed M/s Endolite India Limited to examine the appellant in pursuance to which Ms. Samina Khan, Manager/Senior Prosthetist and Ms. Ekta, Senior Prosthetist/Orthotist appeared before this Court examined the claimant on 1st December, 2016 and submitted that the cost of artificial limb as Rs.98,500/- which was required to be replaced every five years and the cost of the life time replacement was Rs.3,00,000/-. Vide order dated 1st December, 2016, this Court directed Registrar General to release Rs.98,500/- to M/s Endolite India Limited and Rs.3,00,000/- was directed to be kept in a separate FDR in the name of Registrar General for meeting the cost of the life time replacement of artificial limb. A sum of Rs.3,98,500/- is awarded to the claimant towards cost of the artificial limb.

9. The Claims Tribunal has awarded compensation of Rs.1,50,000/- towards pain and suffering. However, no compensation has been awarded under the heads of loss of amenities of life, disfiguration as well as loss of matrimonial prospects. Considering the 70% permanent disability due to amputation of leg, Rs.1,00,000/- is

awarded under the head of loss of amenities of life, Rs.1,00,000/- towards disfiguration and Rs.1,50,000/- towards loss of matrimonial prospects. The claimant is entitled to total compensation of Rs.24,66,712/- as per the breakup given hereunder:-

S.NO.	HEADS	AMOUNT (Rs.)
1.	Loss of Earning Capacity	Rs.12,89,434/-
2.	Loss of Income During Treatment	Rs.1,02,336/-
3.	Cost of Artificial Limb	Rs.3,98,500/-
4.	Medical Expenses	Rs.1,26,444/-
5.	Pain and Suffering	Rs.1,50,000/-
6.	Disfiguration	Rs.1,00,000/-
7.	Loss of Marriage Prospects	Rs.1,50,000/-
8.	Loss of amenities of life	Rs.1,00,000/-
9.	Conveyance, Attendant Charges and Special Diet	Rs.50,000/-
	TOTAL	Rs.24,66,714/-

10. The rate of interest is enhanced from 8% to 9% per annum.

11. Both the appeals are allowed and the compensation amount is enhanced from Rs. 17,59,148/- to Rs. 24,66,714/- along with interest @ 9% per annum from the date of petition i.e. 21st October, 2013 till realisation.

12. New India Assurance Co. Ltd. is directed to deposit enhanced awarded amount along with upto date interest with UCO Bank, Delhi High Court Branch by means of a cheque drawn in the name of UCO Bank A/c Manoj Kumar within a period of 30 days. New India Assurance Co. Ltd. shall file the affidavit containing the computation of the interest on the enhanced award amount upto the date of deposit

within one week of the deposit. The New India Assurance Co. Ltd. shall send the copy of the affidavit to the claimants.

13. New India Assurance Co. Ltd. has deposited the amount awarded by the Claims Tribunal with UCO Bank, Delhi High Court Branch out of Rs.3,00,000/- has been released to the claimant and Rs.98,500/- has been released to M/s Endolite India Limited for fixing the artificial limb.

14. As per the report of UCO Bank, Delhi High Court Branch, the balance amount is lying in 12 FDRs with UCO Bank. The details of the 12 FDRs are as under:-

S.No.	FDR No.	FDR AMOUNT (Rs.)
1.	15530310577509	Rs.95,110/
2.	15530310577523	Rs.95,110/
3.	15530310577530	Rs.95,110/
4.	15530310577547	Rs.95,110/
5.	15530310577554	Rs.95,110/
6.	15530310577561	Rs.95,110/
7.	15530310577578	Rs.95,110/
8.	15530310577585	Rs.95,110/
9.	15530310577592	Rs.95,110/
10.	15530310577608	Rs.95,110/
11.	15530310673690	Rs.91,720/
12.		Rs.6,56,022/
	TOTAL	Rs.16,98,842/-

15. UCO Bank, Delhi High Court Branch is directed to re-schedule the abovementioned 12 FDRs in the following manner:

(i) UCO Bank, Delhi High Court shall keep Rs.13,00,000/- in 130

FDRs of Rs.10,000/- each with cumulative interest in the name of Manoj Kumar for the period of 1 month to 130 months respectively.

(ii) UCO Bank, Delhi High Court Branch shall keep a sum of Rs.3,00,000/- in FDR with cumulative interest in the name of Registrar General of this Court for being utilised for disbursement to M/s Endolite India Limited at the time of replacement of the artificial limb in a phased manner. Upon application being filed by the injured, Manoj Kumar, the Registrar General shall release such amount as would be required from time to time of the replacement directly to M/s Endolite India Limited.

(iii) The balance amount, after keeping Rs. 16,00,000/- in FDRs, be released to Manoj Kumar by transferring the same to his savings bank account No.0798000102286212 in Punjab National Bank, Kalwari Branch, District Basti, Uttar Pradesh – 272301. (IFSC : PUNB0079800).

(iv) The maturity amounts of the FDRs shall be credited in the savings bank account of the Manoj Kumar No.0798000102286212 in Punjab National Bank, Kalwari Branch, District Basti, Uttar Pradesh – 272301. (IFSC : PUNB0079800).

(v) All the original FDRs shall be retained by UCO Bank, Delhi High Court Branch. However, the statement containing FDR number, FDR amount, date of maturity and the maturity amount be furnished to Manoj Kumar.

(vi) No cheque book or debit card be issued to the Manoj Kumar without permission of this Court. However, in case, the debit card and/or cheque book have already been issued, the Punjab National Bank, Kalwari Branch, District Basti, Uttar Pradesh shall cancel the debit card and/or cheque book.

(vii) No loan or advance or pre-mature discharge shall be permitted without the permission of this Court.

(viii) Punjab National Bank, Kalwari Branch, District Basti, Uttar Pradesh shall ensure that the savings bank account of Manoj Kumar is an individual account and not joint account.

(ix) Respondent No.1 is at liberty to approach this Court for release of some FDRs in case of any financial exigency.

16. List for reporting compliance and disbursement of enhancement amount on 19^{th} July, 2017.

17. Copy of this judgment be given *dasti* to counsels for the parties under signatures of the Court Master.

18. Copy of this judgment be sent to UCO Bank, Delhi High Court Branch and to Punjab National Bank, Kalwari Branch, District Basti, Uttar Pradesh who shall send the compliance report to this Court before the next date of hearing.

MAY 08, 2017 **J.R. MIDHA, J.**

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