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

% *Judgment delivered on: 29.04.2019*

\+ MAC. APP. 508/2019 & CM Nos. 19911-12/2019

UNITED INDIA INSURANCE CO LTD. ..... Appellant

Through: Mr. Pradeep Gaur, Advocate.

Versus

ANAND SINGH & ANR. .....Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (ORAL)

1. The appellant impugns an Award dated 01.02.2019 which *inter alia* awarded compensation for loss of future income. It is the appellant's case that since the injured/respondent is a government employee and he would continue to be in government service, therefore, there would be no loss of future income and nothing should have been granted to him under this head. He relies upon the dicta of the Supreme Court in ***Raj Kumar vs. Ajay Kumar & Anr.*** in Civil Appeal No. 8981 of 2010, wherein it was held as under:-

> *"10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident,*

as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of *amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may".*

2. However, it is not disputed that no person is bound to continue in government service throughout his working life. A government employee may want to leave the service and look at greener pastures: for higher earnings, personal growth and/or for job satisfaction. All these options would either not be available or otherwise be severely impaired due to a disability of the nature suffered by the victim in this case. The disability would affect his growth, alternate employment options and consequently his future earnings and growth. Furthermore, the appellant has not brought anything on record to show that the appellant would not be denied further promotions or financial upgradation in the government employment, because of his disability.

3. The appellant has not shown how the aforecited judgment covers the issues dismissed in the preceding paragraph. Therefore, it is distinguishable.

4. In view of the above, the appeal is without merits and is accordingly dismissed.

5. Statutory amount be returned to the appellant.

NAJMI WAZIRI, J

APRIL 29, 2019

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