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

% *Decided on: 15.11.2019*

\+ MAC.APP. 476/2015 & CM No.44844/2019 (By R-1 for early hearing)

ORIENTAL INSURANCE CO LTD ..... Appellant

Through Mr.Pradeep Gaur, Adv.

versus

VIJAY KUMAR SOOD & ORS ..... Respondents

Through Mr.R.K. Dhawan, Adv. with Ms.Richa Dhawan, Adv., Mr.Anuj Chaturvedi, Adv. & Mr.V.K. Teng, Adv. for R-1.

Mr.Shadab Khan, Adv. for R-3 & 4.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the Award of compensation dated 04.04.2015 passed by the learned MACT in Suit No. 408/11 on the ground that while computing compensation towards 'loss of earning capacity' of the injured/claimant, it erred in not taking into consideration the remaining tenure of employment for determining the multiplier.

2. The learned counsel for the appellant submits that since six years of employment remained, therefore, a multiplier of six ought to have been applied and not 9, in terms of the dicta of the Supreme Court in *Raj Kumar vs. Ajay Kumar and Another.,* (2011) 1 SCC 343. The argument is valid. It is allowed. A multiplier of 6 shall be

applied.

3. The Court would note that the petitioner has suffered a deformity as well as loss of amenities of life because of his permanent disability in his right lower limb to the extent of 73%. The learned Tribunal considered the functional disability of the injured as 50%. It reasoned as under:

> *"18. However, it may be noticed that at the same time after retirement at the age of 60 years, the permanent disability is likely to incapacitate the petitioner to perform other challenging assignments to a considerable extent and it may be difficult for him to perform alternate employment with full efficiency. The petitioner even despite 73% disability of lower limb continued in the same job as he appears to have been given a posting which could be performed in the same office which may not have involved substantial field work. The petitioner retired at the designation of General Manager and could have undertaken any challenging assignment/consultancy after retiring from the aforesaid employment in the expanding banking sector but for the injuries suffered in the accident. Considering the facts and circumstances, I am inclined to hold that the loss of earning capacity after the age of 60 years would be about 50% and, therefore, the compensation of Rs. 19,57,500/- {Rs.36,250/- (salary per month) X 12 (months) X 9 (multiplier) X 50%} is awarded towards the loss of earning capacity adopting the principle as followed in United India Insurance Company Ltd. vs. Ashok Kumar and Others (supra)."*

4. The injured being the General Manager in a State owned Bank, this disability would be noticed right away and would continue for the

remainder of his life. It will also reduce his mobility to some extent. In these circumstances, the compensation towards 'loss of amenities of life and deformity' and 'pain and suffering' is enhanced from Rs.1,25,000/- & Rs.1,00,000/- respectively to Rs.5,00,000/- and Rs.2,00,000/- respectively.

5. Accordingly, the amount payable to the claimant is as under:

S.No.	Particulars	Amount
1.	Loss of Earnings [Rs. 36,250/- (monthly income of the injured) x 12 (months) x 6 (multiplier) x 50/100 (50% functional disability)]	Rs. 13,05,000/-
2.	Loss of amenities of life and deformity	Rs. 5,00,000/-
3.	Pain and Suffering	Rs. 2,00,000/-
	TOTAL	Rs. 20,05,000/-

6. The Court would note that for the past half decade, the compensation is awarded with interest @ 9% per annum. Accordingly, the entire awarded amount shall be paid along with interest at the rate of 9% per annum from the date of filing of the petition till its realization. The learned counsel for the claimant contends that for the period of 18.05.2009 to 28.05.2013, no interest has been awarded on the ground that the evidence of the claimant was not completed, in that duration, in view of the order earlier passed by the learned Tribunal on 08.09.2009 to this effect.

7. The learned counsel for the claimant submits that the extremely

trying circumstances of the claimant be kept in mind for reducing the period of exclusion of interest. The unfortunate motor accident claimed the life of claimant's daughter and grand-daughter and severe injuries to his wife and to his other daughter and also to himself, who were hospitalised for a long period of time. It is in these debilitating circumstances that he had to pursue this litigation on two dates. For two dates, he could not appear and on the third date, the doctors concerned were not available. The order dated 08.09.2016 reads as under:-

> *"MAC.APP. 476/2015*
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> *List for hearing on 06th December, 2016.*
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> *Both the parties shall file brief note of submissions not exceeding three pages along with copies of all the relevant documents/judgments on which they wish to rely with relevant portions duly highlighted for the convenience of this Court before the next date of hearing.*
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> *CM No.10705/2015*
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> *The appellant has deposited the entire award amount with the Registrar General of this Court in terms of the order dated 16th July, 2015 out of which 50% amount has been released to the beneficiaries and the balance amount is lying in fixed deposit. The Registrar General is directed to instruct UCO Bank, Delhi High Court Branch to release monthly interest on the balance award amount by transferring the same to the savings bank account of respondent No.1.*
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> *Application disposed of."*

8. On 08.04.2009, 18.05.2009 and 08.09.2009, no PW was present. A last opportunity was granted. It was, however, directed that

in the event of passing of Award, the petitioner will not be entitled for interest from 18.05.2009 till evidence is concluded.

9. The Court would note that no witness was presented on 14.12.2009 either. It was again ordered that no interest will be payable till such time and opportunity to lead evidence was granted. The case was then listed on 12.04.2010 when an amended claim petition was filed. The case was then listed on 24.07.2010, worthwhile but since the petition had been transferred to another district, nothing could be done. However, affidavit in evidence had been filed by the claimant. In fact, the period of exclusion would only be from 18.05.2009 to 24.07.2010. It is after that, the petitioner had filed his affidavit in evidence. The delay was on account of Dr.K. Arun not being present on behalf of the claimant is something for which the claimant cannot be held responsible. In these circumstances, the interest shall not be payable only for the period 18.05.2009 till 24.07.2010.

10. The learned counsel for the insurer submits that the requisite amounts have been deposited in terms of the Award. The insurer shall recalculate the amount payable to the claimant in terms of this order and furnish a copy of the same to the learned counsel for the claimant. Should there be a shortfall, the same shall be made up by depositing the requisite amount before this Court to be released to the beneficiaries of the Award in terms of the scheme of disbursement specified therein. Should the amount deposited be in excess, the same shall be returned to the appellant along with statutory deposit and interest accrued thereon. Let the said exercise be completed within a period of three weeks from the date of receipt of copy of this order.

11. The appeal is allowed and disposed-off in the above terms.

12. The statutory amount, alongwith interest accrued thereon, shall be returned to the appellant.

NAJMI WAZIRI, J

NOVEMBER 15, 2019/aa