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

% ***Date of decision: 18th October, 2024***

\+ MAC.APP. 1038/2017

THE ORIENTAL INSURANCE CO LTD .....Appellant
Through: Mr. Pradeep Gaur, Advocate.

versus

SONI SHARMA & ORS .....Respondents
Through: Mr. S.N.Parashar, Advocate.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T ***(oral)***

CM APPL. 46774/2024 *(under Section 151 CPC on behalf of Respondent No.1 for Release of Compensation)*

1. An Application has been filed on behalf of respondent No.1 for release of compensation in favour of the applicant.

2. The counsel for the Insurance company/appellant and the respondent agreed that the main Appeal may be heard today.

3. In view of the submissions made by the parties, the main Appeal is taken up for adjudication on merits.

4. The compensation amount be deposited by the Insurance Company within eight weeks. The same be released to the claimant/injured in accordance with law.

5. The Application is disposed of.

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6. An Appeal under Section 173 of the Motor Vehicle Act has been filed

against the judgment dated 31.07.2017 whereby compensation in the sum of Rs. 19,12,844/- has been granted to the Respondent No.1/claimant on account of injuries suffered by him which resulted in 18% of permanent disability, in a road accident.

7. The grievance of the Insurance Company against the Award is essentially to grant of Rs.13,49,136/- towards *loss of future salary*. It is argued that the injured was a Lance Naik in the Army and it has come on record that he continued to get his complete salary. There was no loss of salary or loss in future salary to the petitioner. The injured has failed to prove that he suffered from any loss of promotion or loss of salary because of the injuries sustained by him. It is further contended that the Income Tax had not been deducted while calculating the salary income of the injured in making an assessment of loss of future income.

8. It is, therefore, submitted that the *compensation on account of loss of salary* has been wrongly granted by the learned Tribunal.

9. It is further asserted that the compensation granted under non-pecuniary Heads was on the higher side. An amount of Rs.1,00,000/- towards attendant charges; Rs.1,00,000/- towards conveyance and special diet; Rs.1,00,000/- towards pain and sufferings; and Rs.1,50,000/- towards loss of enjoyment of life and amenities, has been granted which is exorbitant and not justified in the facts of the present case.

10. Also, the rate of interest is liable to be reduced from 10% per annum to 6% per annum.

11. It is, therefore, submitted that the impugned judgment of the learned Tribunal dated 31.07.2017 be set aside.

12. Learned counsel for the Insurance Company has placed reliance on *Raj Kumar vs. Ajay Kumar & Anr*, Civil Appeal No.8981/2010, in his support.

13. *Learned counsel on behalf of Respondent No.1/claimant* has argued that the loss of income on account of permanent disability, has been rightly calculated by the Tribunal, considering that the injured had suffered permanent disability to the extent of 18% as has been considered in Paragraphs 17 & 18 of the impugned award. The learned counsel for the claimant has placed reliance on *Hari Singh vs. National Insurance Co. Ltd*, 2023 ACJ 595 (SC).

14. It is argued that the petitioner was Lance Naik in the Army. He lost his promotional avenues and was retired in the year 2021. There is no error in calculation of loss of future income which has been rightly granted by the Tribunal. It is further argued that considering the nature of injuries, the prolonged treatment and the permanent disability suffered by the injured, the compensation amounts given in the various heads, cannot be termed as exorbitant.

15. It is further submitted that interest rate has been granted as per the normal practice at the time of the pronouncement of the Award. The Appeal has no merit which is liable to be dismissed.

16. **Submissions Heard**.

17. The first grievance of the Insurance Company is that the *Loss of Future Salary in the sum of Rs.13,49,136/- has been granted erroneously.* The injured was a Lance Naik in Indian Army and he suffered no loss of income. Even after his retirement, he has got his regular pension. There being no loss of future income, the same is liable to refused. It is further

argued that there has been no deduction made towards the Income Tax. Moreover, the multiplier of 16 has been erroneously applied.

18. Undeniably, the injured had suffered 20% Varicose Vein Limb (OPTD) disability, 1.6% Dyslipidemia Disability, 30% primary hypertension disability and 20% fracture distal 1/3 Tibia Fibula (OPTD). In the case of *Raj Kumar vs. Ajay Kumar & Anr*. 2011 (1) SCC 343, the Apex Court had brought out the difference between Permanent Disability and Functional Disability resulting in Loss of Earning Capacity. It was observed that the loss of earning capacity has to be granted in accordance to the nature of job performed by the injured. The effect of permanent disability on the earning capacity in terms of percentage of the income, is required to be quantified in terms of money to arrive at future loss of earning by applying the standard multiplier method used to determine the Loss of Dependency. *It was further explained that the nature of permanent disability suffered by the injured would have to be assessed in terms of the occupation of the injured.* Even though the functional disability was 60% of the arm, but for a Driver or a Carpenter he loses a complete earning capacity and thus, his functional disability may be taken as 100% while calculating the Loss of Earning Capacity.

19. The learned Tribunal relying upon the case of *Raj Kumar (supra)* and held that since the petitioner was Lance Naik in Indian Army, had taken the overall disability as 18% functional disability and had accordingly calculated *the Loss of Future Capacity as : (3,12,300/- + 50% Future Prospects X18%) X 16) = Rs.13,49,136/-.*

20. It cannot, however, be over looked that the petitioner was a Lance Naik in Indian Army and though his overall permanent disability was

assessed as 18%, but there is no denial that he continued in the service and did not suffer from any loss of income for so long as he remained in the service. He retired in the year 2021 and had been getting his regular salary and all the perks and the benefits.

21. Learned counsel for claimant had tried to justify the compensation for the *Loss of Future Salary* by asserting that he was entitled to continue in service for 20 years but he had been prematurely retired in 2021. However, neither any document had been placed on record nor is there any testimony to establish the date on which the claimant got appointed on the post of Lance Naik and when his 20 years got over. He was 32 years old at the time of his accident in 2010 and has retired in 2021. There is nothing to show that he was retired prematurely or suffered on account of promotional avenue. There can be no conjectural calculation of functional disability in the absence of any evidence whatsoever. Therefore, the learned Tribunal fell in error in granting the Loss of Future Income in the sum of Rs.13,49,136/- to which the respondent/claimant is not entitled.

22. Learned counsel for the claimant had placed reliance on *Hari Om vs. National Insurance Company Ltd.*, wherein though the claimant was in Government service, he was granted Rs.18,836/- on account of Loss of Future Income, as he had suffered disability to the extent of 45%. However, the said judgment has been given on its own facts and does not lay down the proposition of law and is, therefore, distinguished.

23. It is, therefore, held that **compensation amount towards Loss of Future Income in the sum of Rs.13,49,136/-, is not payable to the claimant**.

24. The Insurance Company has also challenged the compensation

amount granted under the following heads:

Attendant Charges	-	Rs.1,00,000/-
Conveyance & Special Diet	-	Rs.1,00,000/-
Pain & Suffering	-	Rs.1,00,000/-
Loss of Amenities of life	-	Rs.1,50,000/-

25. The ld. Counsel on behalf of the Injured had sought to justify the compensation under these heads by asserting that the accident not only caused grievous injury but also resulted in Permanent Disability of 18%.

26. According to the Permanent Disability Certificate, the 18% permanent disability has been shown as:

(i) 20% Varicose Vein Limb (OPTD) disability;

(ii) 1.6% Dyslipidemia Disability (high cholesterol);

(iii) 30% primary hypertension disability; and

(iv) 20% fracture distal 1/3 Tibia Fibula (OPTD).

27. There is no explanation forthcoming as to how the *Varicose Vein, hypertension or high cholesterol level* can be attributed to the accident or be termed as permanent disability. Be as it may, what is evident is that he had suffered a fracture of 1/3 Tibia Fibula.

28. Considering the nature of the injury, it can be assessed that he may have remained under treatment for about two months as it is a known fact that fractures generally heal within six weeks. He would have required an attendant for about two months, which is granted accordingly. Considering the nature of injuries, it cannot be said that the Charges given towards the Attendant and Special Diet & Conveyance are justified. They are evidently exorbitant and are hereby revised as under:

Sr. No.	Heads	Amount Awarded	Revised Amount
1.	Attendant Charges	Rs. 1,00,000/-	**25,000/-** **(12,500 x 2)**
2.	Conveyance & Diet	Rs. 1,00,000/-	**30,000/-** (15000+15000)
3.	Pain & Suffering	Rs.1,00,000/-	Rs.1,00,000/- (Same)
4.	Loss of Amenities of Life	Rs. 1,50,000/-	Rs. 1,50,000/- (Same)

29. The compensation amount is accordingly revised.

Conclusion:

30. In view of the aforesaid discussion, the compensation amount is calculated as under :

Sr.No.	**HEADS**	**Amount awarded by the Tribunal**	**Revised Amount by this Court**
1.	Attendant Charges	1,00,000/-	**25,000/-**
2.	Conveyance & Special Diet	1,00,000/-	**30,000/-**
3.	Loss of Income	1,13,708/-	1,13,708/- (Same)
4.	Permanent Loss of	Rs.13,49,136/-	**NIL**

	future earnings due to disability		
5.	Pain & Suffering	1,00,000/-	Rs.1,00,000/- (Same)
6.	Loss of Enjoyment of Life and Amenities	1,50,000/-	Rs. 1,50,000/- (Same)
	TOTAL COMPENSATION	Rs.19,12,844/-	**Rs.4,18,708/-**

31. In view of the above, the total compensation awarded to the respondent No.1 is Rs. 4,18,708/- along with interest @ 10% per annum, as detailed in the Award dated 31.07.2017.

32. The Appeal is disposed of, accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 18, 2024
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