(2012) 08 DEL CK 0060

In the Delhi High Court

Case No : MAC. APP. 833 of 2010

Bajaj Allianz General Insurance Co. Ltd. — APPELLANT

Vs

Poonam Arora and Others — RESPONDENT

Date of Decision : 01-08-2012

Acts Referred:

Citation : (2012) 08 DEL CK 0060

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Neerja Sachdeva, for the Appellant; S.N. Parashar, for the Respondent

Judgement

G.P. Mittal, J.—Ms. Poonam, a girl aged 17 years (at the time of the accident which occurred on 19.11.2008) while proceeding to her school in a cycle rickshaw suffered injuries in a motor vehicle accident which occurred on 19.11.2008, resulting into amputation of her right leg below knee. A Disability Certificate Ex.PW-1/7 was issued by Sanjay Gandhi Memorial Hospital, Mangol Puri declaring her to be a case of permanent disability to the extent of 60% in respect of her right lower limb.

2. The Appellant was a student of 10th standard at the relevant time. She completed her Matriculation after the accident. The Motor Accident Claims Tribunal (the Claims Tribunal) awarded compensation of Rs. 14,53,185/- which is tabulated hereunder:-

Sl. No.

Compensation under various heads

Awarded by the Claims Tribunal

1.

Medical Expenses

Rs. 54,173/-

2.

Conveyance Charges

Rs. 20,000/-

3.

Special Diet

Rs. 20,000/-

4.

Loss of Earning Capacity

Rs. 6,27,912/-

5.

Costs of Affixation of Artificial Limb

Rs. 1,23,100/-

6.

Change of Artificial Limb/Parts, Repairs in Future

Rs. 1,00,000/-

7.

Pain and Suffering

Rs. 1,00,000/-

8.

Loss of Amenities of Life

Rs. 1,00,000/-

9.

Physical Disfigurement

Rs. 1,00,000/-

10.

Loss towards Marital Prospects

Rs. 1,00,000/-

11.

Loss on account of Conveyance

Rs. 1,08,000/-

TOTAL

Rs. 14,53,185/-

3. The Appellant Insurance Company has come up with this Appeal with the plea that the compensation awarded is exorbitant and excessive.

4. It is urged that the Claims Tribunal considered the loss of earning capacity to be 50% in respect of whole body which was without any objective material. Since the Claimant was not working on the date of the accident, instead of awarding her compensation on the basis of Minimum Wages of a non-Matriculate she should have been awarded compensation on notional income of Rs. 15,000/-.

5. Insurance Company says that the compensation of Rs. 1,08,000/- awarded towards future conveyance was without any evidence, particularly, when the First Respondent was adequately compensated for getting an artificial limb as also for its repair etc. The compensation of Rs. 1,00,000/- each awarded towards pain and suffering, loss of amenities of life, physical disfigurement and loss of marital process is claimed to be on the higher side.

6. In Raj Kumar Vs. Ajay Kumar and Another, , the Supreme Court brought out the difference between permanent disability and functional disability resulting in the loss of earning capacity. It was laid down that the compensation on account of loss of earning capacity has to be granted in accordance to the nature of job undertaken by the victim of motor accident. Paras 11 and 14 of the report are extracted hereunder:

11. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terns of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this Court in Arvind Kumar Mishra Vs. New India Assurance Co. Ltd. and Another, and Yadava Kumar Vs. The Divisional Manager, National Insurance Co. Ltd. and Another, .

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14. 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.

7. Thus, the same disability may have a different impact on the earning capacity of an injured following a different vocation.

8. In the instant case, the First Respondent was a student of 10th standard at the time of the accident. It has come in evidence that she completed her Matriculation after the accident. It would be very difficult to say, at this stage, as to how the injuries suffered by her would have an impact on her earning capacity. The First Respondent examined PW-3 Dr. Sanjay Kumar, Junior Specialist (Ortho), Sanjay Gandhi Memorial Hospital, Mangol Puri, Delhi who testified that the amputation was below knee upto lower one-third. He deposed that the First Respondent would be able to walk almost normal with an artificial limb but she would not be in a position to run, squat, sit, cross legs. She would always have difficulty in climbing stairs. He testified that she would be incapacitated to do the physical work normally. She would be able to do any sitting work but would not be able to drive a vehicle.

9. In the circumstances, the Claims Tribunal was not justified in accepting the loss of future earning capacity to the extent of 50%.

10. Taking into consideration all the facts mentioned above, I would make a guess work to assess the loss of earning capacity in case of a student to be 40% with regard to the whole body.

11. The Claims Tribunal awarded compensation taking minimum wages of a Non-Matriculate. It is well settled that potential income of a person can be taken into consideration while awarding compensation for loss of earning capacity or to the legal heirs for awarding loss of dependency. The First Respondent completed her Matriculation during the inquiry before the Claims Tribunal. Even if she does not go for any higher education, she should have been awarded compensation on the basis of Minimum Wages of a Matriculate. The contention raised on behalf of the Appellant that notional income of Rs. 15,000/- should be taken to award compensation towards loss of future earning capacity, is misconceived and is

therefore rejected.

12. The First Respondent admittedly was 17 years on the date of the accident and was a student of 10th standard. She crossed the age of 18 years during the pendency of the Claim Petition. Thus, the loss of earning capacity should have been awarded on the minimum wages of a Matriculate. The Claims Tribunal made an addition of 50% towards the future prospects. In the absence of any evidence and following Santosh Devi v. National Insurance Company Ltd. & Ors.,2012 (4) SCALE 559; I would grant an increase of 30% only towards future prospects/ inflation. The loss of future earning capacity comes to Rs. 4,63,993/- (4131/- + 30% x 12 x 18 x 40%) instead of Rs. 6,27,912/- awarded by the Claims Tribunal.

13. In the matter of Govind Yadav v. New India Assurance Co. Ltd., 2011(10) SC 683, the Supreme Court had the occasion to deal with the case of an amputation of leg above knee of a victim aged 24 years in a motor accident which took place in the year 2004. The Hon''ble Supreme Court granted a sum of Rs. 1.5 lakhs towards pain and suffering and Rs. 1.5 lakhs towards loss of amenities in life and loss of marriage prospects. In this case, the amputation is below the knee and the First Respondent was aged 17 years on the date of the accident. The First Respondent is a girl where loss of one limb causes a stigma and is a great hindrance in marriage.

14. In the circumstances, the award of compensation of Rs. 4,00,000/- in all i.e. Rs. 1,00,000/- each towards pain and suffering, loss of amenities in life, physical disfigurement and loss of marital process, cannot be said to be excessive as this accident took place almost four years after the accident in Govind Yadav.

15. In the circumstances, I am not inclined to interfere in the award of compensation under non-pecuniary heads.

16. As far as award of compensation on account of future conveyance is concerned, as stated earlier PW-3 has stated that she would be able to walk almost like a normal person. Travelling in a public transport with low floor DTC buses and Delhi Metro would not be a great handicap. Since she has been awarded compensation towards loss of amenities and under other non pecuniary heads, awarding compensation towards any loss on account of conveyance is not justified. Thus the award of compensation of Rs. 1,08,000/- under this head is set aside.

17. No other contention has been raised.

18. There is overall reduction in the compensation by Rs. 2,71,919/-.

19. The excess amount of Rs. 2,71,919/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company. The amount payable to the First Respondent shall be disbursed in terms of the impugned judgment.

20. The statutory deposit of Rs. 25,000/- shall be refunded to the Appellant

Insurance Company.

21. No costs. Pending Applications also stand disposed of.

