(2012) 05 DEL CK 0524

In the Delhi High Court

Case No : MAC APP 915 of 2011 and MAC.APP. 1162 of 2011

National Insurance Company LTD — APPELLANT

Vs

Sanjeev Sherawat and Ors
 Sanjeev Sherawat and Ors Vs National Insurance Company LTD — RESPONDENT

Date of Decision : 22-05-2012

Acts Referred:

Citation : (2012) 05 DEL CK 0524

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

Bench : Single Bench

Advocate : Nanita Sharma and Mr. D.V. Goyal, for the Appellant; D.V. Goyal, Advocate for R-1 and Ms. Nanita Sharma, for the Respondent

Judgement

G. P. Mittal, J.

CM APP.23369/2011 (delay) in MAC APP1162/2011

1. This is Cross Appeal to MAC APP.915/2011. There is a delay of 122 days in filing the Appeal. For the reasons as stated in the Application, the delay of 122 days in filing the Appeal is condoned. The Application is allowed.

MAC APP.915/2011 and MAC APP1162/2011

These two Appeals arise out of a common judgment dated 25.06.2011 passed in Suit No.80/10/07 whereby a compensation of `11,66,718/- was awarded in favour of Sanjeev Sherawat (First Respondent in MAC APP.915/2011 and the Appellant in MAC APP.1162/2011) for having suffered injuries in a motor accident which occurred on 26.06.2007.

2. For the sake of convenience, the Appellant in MAC APP.915/2011 shall be referred to as the Insurer and the Appellant in MAC APP.1162/2011 shall be referred to as the Claimant.

3. The Claimant who was a student of 10th standard on the date of the accident

was proceeding on his two wheeler No. HPK-7200 from Delhi University to Shivaji College. When he reached near traffic booth in front of ESI Hospital, Ring Road, he was hit by a Tata-407 crane No.DL-1LE-5535. Due to the forceful impact, the Claimant suffered grievous injuries. His foot got separated from the ankle. He was removed to DDU Hospital and thereafter shifted to Jaipur Golden Hospital. To save the Claimant''s life his left leg had to be amputated below knee resulting into permanent disablement in respect of the left lower limb to the extent of 60%.

4. The Claims Tribunal on appreciation of evidence found that 60% disability in respect of left lower limb on account of amputation would be treated as 60% functional disability resulting into loss of earning capacity to that extent.

5. The Claims Tribunal took the minimum wages, added 50% towards inflation and awarded a compensation of Rs. 7,77,600/- towards loss of earning capacity. It is this award which is being challenged by the Appellant Insurance Company being excessive and exorbitant.

6. The compensation awarded under various heads is extracted hereunder:-

Sl. No.

Compensation under various heads

Awarded by the Claims Tribunal

1.

Compensation for the expenses incurred on medical treatment

Rs. 1,71,818/-

2.

Compensation for Special Diet, Conveyance and Attendant Charges

Rs. 37,300/-

3.

Compensation on account of Loss of Studies

Rs. 20,000/-

4.

Compensation for Loss of Income

Rs. 20,000/-

5.

Compensation for Pain & Suffering

Rs. 50,000/-

6.

Compensation for Loss of Amenities of Life

Rs. 40,000/-

7.

Compensation for Loss of Earning Capacity

Rs. 7,77,600/-

8.

Compensation for Physical

Rs. 50,000/-

Disfigurement due to Permanent Disability

Total

Rs. 11,66,718/-

7. On the other hand, the contention raised on behalf of the Claimant is that the compensation awarded towards loss of one year and loss of studies amounting to Rs. 20,000/-; the compensation awarded towards pain and suffering amounting to Rs. 50,000/- and compensation for loss of amenities in life and physical disfigurement amounting to Rs. 40,000/- and Rs. 50,000/- respectively was on the lower side. The compensation awarded towards loss of earning capacity, argues the learned counsel for the Claimant, cannot be said to be excessive or exorbitant in view of the fact that the Claimant would not be able to carry out any work at all with the loss of one leg.

8. It may be noticed that at the relevant time, the Claimant was a student of 10th standard. It has come in evidence that the Claimant lost 15 months in his studies as he was recovering from the serious injuries suffered by him. At the time of disposal of the Petition, the Claimant was pursuing BA after having passed his 12th examination.

9. In General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, the Supreme Court held as under: -

5......The determination of the quantum must answer what contemporary society "would deem to be a fair sum such as would allow the wrongdoer to hold up his head among his neighbours and say with their approval that he has done the fair thing". The amount awarded must not be niggardly since the law values life and limb in a free society in generous scales''. All this means that the sum awarded must be fair and reasonable by accepted legal standards."

10. 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 v. New India Assurance Co. Ltd. 2010 (10) SCC

254 and Yadava Kumar Vs. The Divisional Manager, National Insurance Co. Ltd. and Another, x x x x x x x 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.

11. The Claimant in his Affidavit Ex.PW-1/A testified that his career and his future life is ruined as he was deprived of to join Indian Army which was his desire.

12. Different disability may have different impact on the earning capacity depending upon vocation or enterprise of the victim.

13. In this case, the Claimant was only a student on the date of the accident. Thus, his profession had not yet crystallized. A person losing left leg working as a

driver may not be able to drive the vehicle. There may not be much difficulty in carrying out the professional duty, if the victim with lose of one leg is to do only the desk work.

14. It is merely a speculation that the Claimant wanted to join Indian Army. It is not known whether he would have been selected or would have been really interested to join the Indian Army in due course.

15. In the circumstances I am left with the option just to make a guess work and would take the loss of earning capacity to be 40% in respect of the whole body as against 60% taken by the Claims Tribunal. The potential income of Rs. 6,000/- (inclusive of future prospects), in the absence of any good academic record even for a Graduate was appropriately taken by the Claims Tribunal (although the Claimant was only a student of 10th standard at the relevant time).

16. Thus, the loss of earning capacity would come to Rs. 5,18,400/- (6,000/- x 12 x 18 x 40%).

17. In the case 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.

18. In this case, the amputation is below knee and the Claimant is aged 20 years. Here, the Claims Tribunal awarded the compensation of Rs. 40,000/- towards the loss of amenities in life and Rs. 50,000/- towards disfigurement. This compensation of Rs. 90,000/- is raised to Rs.1.5 lacs and is awarded towards loss of amenities in life, disfigurement and loss of marriage prospects. The compensation of Rs. 50,000/- awarded towards pain and suffering is enhanced to Rs. 75,000/-.

19. The Claims Tribunal awarded the compensation of Rs. 20,000/- towards loss of studies. The Claimant''s testimony that he lost 15 months in his studies was not challenged in cross-examination. Thus, it is established that it was not only loss of studies but there was loss of one year in life as well. The compensation of Rs. 20,000/- awarded towards loss of studies is enhanced to Rs. 50,000/-.

20. The compensation awarded is re-computed as under:-

Sl. No.

Compensation under various heads

Awarded by this Court

1.

Loss of Amenities in Life, Disfigurement and Loss of Marriage Prospects.

Rs. 1,50,000/-

2.

Pain and Suffering

Rs. 75,000/-

3.

Loss of Studies

Rs. 50,000/-

4.

Loss of Earning Capacity

Rs. 5,18,400/-

5.

Medical Treatment (as awarded by the Claims Tribunal)

Rs. 1,71,818/-

6.

Special Diet, Conveyance & Attendant Charges (as awarded by the Claims Tribunal)

Rs. 37,300/-

7.

Loss of Income (as awarded by the Claims Tribunal)

Rs. 20,000/-

Total

Rs. 10,22,518/-

21. The compensation is thus reduced from Rs. 11,66,718/- to Rs. 10,22,518/-.

22. By order dated 19.12.2011, pending disposal of the Appeal a sum of Rs. 2,00,000/- along with the proportionate interest was ordered to be released in favour of the Claimant. Rest of the amount payable along with proportionate interest shall be held in fixed deposit for a period of one year, three years, five years, seven years, nine years and eleven years in equal proportion.

23. By order dated 17.10.2011 execution of the award was ordered to be stayed, subject to deposit of the 80% of the award amount in UCO Bank, Delhi High Court Branch, New Delhi, the deficiency in the deposit shall be made up within six weeks.

24. Insurer National Insurance Company Limited is directed to deposit the balance awarded amount within six weeks in the abovesaid Bank.

25. The Statutory amount of Rs. 25,000/- shall be refunded to the Appellant Insurance Company in MAC APP.915/2011.

26. Both the Appeals are allowed in above terms. Pending Applications also stand disposed of.

