

(2012) 05 DEL CK 0235
In the Delhi High Court
Case No : MAC. No. 1152 of 2011

New India Assurance Co. Ltd.

APPELLANT

Vs

Kanahiya Lal and Others

RESPONDENT

Date of Decision : 17-05-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 05 DEL CK 0235

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

Bench : Single Bench

Advocate : Sameer Nandwani, for the Appellant; M.K. Sinha, Advocate, for the Respondent

Final Decision : Allowed

Judgement

G. P. MITTAL, J.—The Appeal is for reduction of compensation of ` 15,07,318/- awarded by the Claims Tribunal in favour of the First Respondent for having suffered injuries in an accident which occurred on 09.01.2009. The contentions raised on behalf of the Appellant are:

(i) This was a head-on collision, thus there was contributory negligence on the part of the First Respondent. The compensation awarded should be reduced by 50%.

(ii) The First Respondent suffered 80% disability on account of amputation of his right leg below knee. The Claims Tribunal did not give any finding as to the actual loss of earning capacity and simply reduced it on surmises to 50%. It should have been taken as less than 40%.

2. The Claims Tribunal dealt with the issue of negligence as under:

6. Since the present claim petition has been instituted under the provisions of Section 166 MV Act, it was incumbent upon the petitioner to establish on record the negligence attributed to R-1, driver while plying the RTV. The petitioner has

clearly stated the circumstances leading to the accident. In the FIR initially and in the claim petition, it is averred that R-1 was plying the RTV in rash and negligent manner resulting in the accident. The FIR, Ex.PW1/2 is the first statement made by the petitioner against the respondent for the rash and negligent act. On the basis of the FIR, the IO has proceeded with the investigation and has prepared the site plan. The site plan clearly reflects that the accident has occurred in the lane where the petitioner was going as the respondent was plying his RTV in the wrong side. The site plan besides the mechanical inspection report, EX.PW1/7 relied upon in the charge-sheet, also shows the involvement of the offending vehicle.....

3. I have perused the certified copy of the site plan placed on the record of the Claims Tribunal. It shows that the RTV driver (Respondent No. 2) was coming from wrong side, but the accident took place at the blind turning. The First Respondent could not have expected or anticipated anybody coming from the wrong side. Since it is established that the Second Respondent while driving RTV No. DL 1V A-3091 in a rash and negligent manner came from the wrong side, the negligence on the part of the Second Respondent was writ large. The Claims Tribunal finding on this aspect is logical and well-reasoned. The same is confirmed.

4. 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 and the disability suffered by him. 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 terms 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

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.

5. In this case, the First Respondent was running a travel agency. Most of the time, he would be required to be at the desk for his work; at the same time, he has to carry out some outdoor activities also in connection with his business. In the circumstances, it would be just and fair to take the loss of earning capacity to 40% in respect of the whole body. The compensation on account of loss of earning capacity comes to ` 9,21,400/- ( ` 1,35,500/- X 40% X 17)

6. The compensation is thus reduced by ` 2,30,792/-. The excess compensation of ` 2,30,792/- along with proportionate interest and the interest earned during the pendency of the Appeal shall be returned to the Appellant Insurance Company.

7. Rest of the amount shall be disbursed in terms of order passed by the Claims Tribunal.

8. The Statutory amount of ` 25,000/- shall be released to the Appellant Insurance Company. The Appeal is allowed in above terms.