
(2012) 07 DEL CK 0570
In the Delhi High Court
Case No : MAC. APP. 347 of 2010

New India Assurance Company Ltd.

APPELLANT

Vs

Kalawati and Others

RESPONDENT

Date of Decision : 18-07-2012

Acts Referred:

Citation : (2012) 07 DEL CK 0570

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

Bench : Single Bench

Advocate : Abhishek Kumar, for the Appellant; S.N. Parashar, for R-1, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appeal is for reduction of compensation of Rs. 15,10,049/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the First Respondent for having suffered injuries in a motor vehicle accident resulting into grievous injuries on her person including permanent disability to the extent of 60% in relation to her right lower limb on account of amputation of right leg below knee. This accident occurred on 12.03.2007. The finding on negligence reached by the Claims Tribunal is not disputed by the Appellant, the driver and owner of the vehicle. Thus, the same has become final between the parties.

2. During the course of hearing, following contentions are raised

on behalf of the Appellant:-

(i) As per the First Respondent, she was working as a maid servant. On account of amputation of her right leg below knee and 60% permanent disability in respect of her right lower limb she was not incapacitated to carry out the work or in any case some alternative employment. It is urged that she could have worked as a Baby sitter or could have taken up any other job where active involvement of the right leg was not required.

(ii) There was no evidence with regard to the First Respondent's future prospects; the Claims Tribunal erred in granting 50% increase in the minimum wages of an unskilled worker on account of inflation.

(iii) In case, when compensation towards the loss of future earning capacity to the extent of more than 50% is granted, the First Respondent was not entitled to a compensation of Rs. 1,50,000/- towards loss of amenities in life, particularly, when she had been granted a compensation of Rs. 1,00,000/- towards pain and suffering and Rs. 50,000/- towards disfigurement separately.

3. On the other hand, learned counsel for the First Respondent supports the award. He argues that a woman with no qualification and who was working as a maid servant in different houses would hardly get any alternative employment. The job of a baby sitter also requires active involvement with a small child and no parent would give employment to her. It is urged that the Claims Tribunal was justified in awarding compensation of 100% loss of future earning capacity as also making an addition of 50% towards inflation. It is submitted that the compensation of Rs. 1,50,000/- towards loss of amenities cannot be said to be exorbitant and excessive.

4. Immediately after the accident, the first Respondent was removed to Sanjay Gandhi Memorial (SGM) Hospital where she remained admitted from 12.03.2007 to 21.03.2007. She was shifted to Maharaja Agarsen Hospital on 21.03.2007 where she remained admitted upto 14.04.2007. The First Respondent had suffered compound fracture of femur and injury on right foot and left leg. She was treated conservatively in SGM Hospital and external fixation of right thigh was provided. There was also fracture of right superior and inferior pubic rami and fracture of left inferior public rami. The right leg of the first Respondent could not be saved which was amputated in Maharaja Agarsen Hospital. The First Respondent was again admitted in Maharaja Agarsen Hospital from 23.07.2007 to 04.08.2007. It is, therefore, apparent that apart from amputation of right leg below knee, there were other serious injuries and fractures suffered by the First Respondent. The compensation awarded by the Claims Tribunal under different heads is tabulated hereunder:-

Sl. No.

Compensation under various heads

Awarded by the Claims Tribunal

1.

Compensation for incurred medical Expenses

Rs. 32,209/-

2.

Compensation for conveyance charges

Rs. 15,000/-

3.

Compensation for Special Diet

Rs. 15,000/-

4

Compensation for Attendant Charges

Rs. 15,000/-

5.

Compensation for Loss of Earning Capacity

Rs. 8,74,440/-

6.

Compensation for Fitment of Endolite below knee system

Rs. 74,400/-

7.

Compensation for Cost of Replacement of Parts of Endolite below knee system

Rs. 1,00,000/-

8.

Compensation for Loss on account of Conveyance (future expenses)

Rs. 84,000/-

9.

Compensation for Pain and Suffering

Rs. 1,00,000/-

10.

Compensation for Loss of Amenities of Life

Rs. 1,50,000/-

11.

Compensation for Physical Disfigurement due to Permanent Disability

Rs. 50,000/-

Total

Rs. 15,10,049/-

5. 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 permanent 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 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."

6. The Claims Tribunal dealt with the issue of loss of future earning capacity in Paras 34 and 35 of the impugned judgment which are extracted hereunder:-

34. The vocation of the petitioner as a maid servant requires active and agile movement, going from her home to her different places of work viz., residential

houses where she was engaged as maid servant, doing such work there requiring walking, sitting, squatting, climbing stairs and kneeling. Considering the condition of the petitioner, since she suffered such amputation, I am of the considered opinion that the petitioner not only would face extreme hardship in doing such work of maid servant but would also in fact be incapacitated or unable to do such work. Since, for the work of part time maid servant, the requirements of employers of such workers would be qua demand of active and agile movement from their such employee for performing such work speedily, in time and actively. The permanent disability would come in the way of the petitioner while discharging such work of the maid servant and she would not at all be able to do any such work in future.

35. The petitioner would accordingly face 100% functional disability due to the suffered permanent disability.

7. The reasoning given by the Claims Tribunal is inconsonance with the law laid down in Raj Kumar (supra). The First Respondent could not have carried out job of maid servant. She could not get an employment of baby sitting as parents would require the lady to be agile and very active. In the circumstances, the Claims Tribunal was justified in taking the functional disability to be 100%.

8. As far as addition of 50% on account of inflation is concerned, the same was not justified. In Santosh Devi Vs. National Insurance Company Ltd. and Others, the Supreme Court laid down that in case of self-employed and persons having fixed income, an increase to the extent of 30% could be given towards inflation. Para 14 of the report is extracted hereunder:-

14... In our view, it will be naive to say that the wages or total emoluments/ income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/ emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/ income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot

be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."

9. The loss of future earning capacity thus comes to Rs. 7,57,848/- (3470/- + 30% x 12 x 14) as against Rs. 8,74,440/- awarded by the Claims Tribunal.

10. In Raj Kumar (supra) it was laid down that where any compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation.

11. In this case, the Claims Tribunal apart from awarding compensation of Rs. 1,00,000/- towards pain and suffering also awarded a sum of Rs. 50,000/- towards disfigurement and Rs. 1,50,000/- towards loss of amenities in life. Relying on Raj Kumar (supra), I reduce the compensation towards loss of amenities from Rs. 1,50,000/- to Rs. 25,000/-.

12. The overall compensation is reduced from Rs. 15,10,049/- to Rs. 12,68,457/- (including the interim compensation of Rs. 25,000/-).

13. The excess amount of Rs. 2,41,592/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.

14. The statutory deposit of Rs. 25,000/- be refunded to the Appellant Insurance Company.

15. The Appeal is allowed in above terms. Pending Applications also stand disposed of.