(2012) 07 DEL CK 0415

In the Delhi High Court

Case No : MAC. APP. 413 of 2010

Oriental Insurance Company Ltd. APPELLANT

Vs

Prabhu Dayal and Others RESPONDENT

Date of Decision : 24-07-2012

Acts Referred:

Citation : (2012) 07 DEL CK 0415

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

Bench : Single Bench

Advocate : Pradeep Gaur, for the Appellant; S.N. Parashar, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appellant Oriental Insurance Company Limited impugns a judgment dated 25.03.2010 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs. 6,54,483/-was awarded in favour of the first Respondent for having suffered injuries in a motor vehicle accident which occurred on 29.11.2005. The First Respondent suffered a crush injury on his left foot resulting into permanent disability in respect of left lower limb to the extent of 60%. Considering the period of hospitalization for two months that is 30.11.2005 to 27.01.2006 and that the First Respondent was a tailor by profession. The Claims Tribunal awarded a compensation of Rs. 6,54,483/- which is tabulated hereunder:-

Sl. No.

Compensation under various heads

Awarded by the Claims Tribunal

1.

Compensation for expenses incurred on Medical Expenses

Rs. 1,543/-

2.

Compensation for conveyance charges

Rs. 10,000/-

3.

Compensation for special diet charges

Rs. 10,000/-

4.

Compensation for attendant charges

Rs. 10,000/-

5.

Compensation for loss of income

Rs. 21,540/-

6.

Compensation for loss of earning capacity

Rs. 3,55,400/-

7.

Compensation for pain and suffering

Rs. 80,000/-

8.

Compensation for loss of amenities of life

Rs. 1,00,000/-

9.

Compensation for loss on account of Conveyance (future expenses)

Rs. 66,000/-

Total

Rs. 6,54,483/-

2. The sole contention raised on behalf of the Appellant Insurance Company, during hearing of the Appeal is that a compensation of Rs. 3,55,400/- awarded towards loss of future earning capacity was excessive and exorbitant in as much as PW-3 Dr. Sanjay Kumar, Chairman of Medical Board, Sanjay Gandhi Memorial Hospital testified that considering his vocation of a tailor the First Respondent''s

functional disability would be about 40-50%. It is urged that the First Respondent was 53 years and once the Claims Tribunal accepted the doctor''s opinion and granted compensation on 50% of his earning capacity, no addition on account of future prospects was required to be made as the First Respondent was 53 years of age on the date of the accident. Reliance is placed on Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and Santosh Devi v. National Insurance Company Ltd. & Ors., 2012 (4) SCALE 559.

3. I am in agreement with the Learned Counsel for the Appellant. Since the First Respondent was more than 50 years, no addition on account of future prospects or inflation was required to be made while computing the loss of future earning capacity.

4. It is urged by the Learned Counsel for the First Respondent that the compensation awarded towards non-pecuniary damages was on the lower side. I would not agree with the submissions raised.

5. The accident took place in the year 2005 and a compensation of Rs. 1,00,000/- was awarded towards the loss of amenities of life in addition to a sum of Rs. 80,000/- towards pain and suffering. A compensation of Rs. 10,000/- was awarded towards conveyance charges during the period of treatment and Rs. 66,000/- towards future conveyance charges.

6. Thus, the compensation awarded under non-pecuniary heads was just and reasonable.

7. In view of foregoing discussion, the First Respondent was entitled to a compensation of Rs. 2,36,874/- (3589/- x 12 x 11 x 50%) as against award of Rs. 3,55,400/-.

8. I accordingly reduce the amount of compensation under the head of loss of earning capacity from Rs. 3,55,400/- to Rs. 2,36,874/-. Consequently, the overall compensation awarded is reduced by Rs. 1,18,526/-.

9. The excess amount of Rs. 1,18,526/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.

10. The balance compensation shall be released to the First Respondent in terms of the order passed by the Claims Tribunal.

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

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