

THE NEW INDIA ASSURANCE CO. LTD.

v.

GAJENDER YADAV AND ORS.

(Civil Appeal No. 9006 of 2017)

JULY 13, 2017

[KURIAN JOSEPH AND R. BANUMATHI, JJ.]

Motor accident – Quantum of compensation – On facts, claimant aged 37 years, working as Security Officer met with an accident – Amputation of left leg below knee causing 85% permanent disability – Tribunal awarded compensation of Rs. 6,87,000/- with interest @ 9% pa from the date of the claim petition – However, High Court enhanced the compensation amount to Rs. 27,14,835/- – On appeal, held: Claimant suffered serious injury which caused functional disability since his future promotions have been sealed – Total disability factor is taken as 40%, and age being 37 years, the multiplier 15 is applied – Compensation towards future earnings comes to Rs.15,12,000/- – High Court, in the pecuniary part, awarded Rs.8 Lakhs on account of physical disability and for future loss of earnings Rs. 13 Lakhs, which is a duplication – Compensation is only for the loss on account of disability – Total amount of Rs. 21 Lakhs to be substituted by Rs.15,12,000/- and the rest of the High Court order is maintained – Furthermore, Rs.2,00,000/- is awarded towards the claim for change of artificial limb at least once in two years – Thus, claimant entitled to a total compensation of Rs. 23,26,835/- along with interest @ 8% from the date of the claim petition.

Raj Kumar v. Ajay Kumar & Anr. (2011) 1 SCC 343 : [2010] 13 SCR 179; Sandeep Khanuja v. Atul Dande & Anr. (2017) 2 SCALE 314 – referred to.

Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr. (2009) 6 SCC 121 : [2009] 5 SCR 1098 – relied on.

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Case Law Reference

[2010] 13 SCR 179 referred to Para 5

(2017) 2 SCALE 314 referred to Para 5

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[2009] 5 SCR 1098 relied on. Para 7

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9006 of 2017.

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From the Judgment and Order dated 16.12.2014 of the High Court of Punjab and Haryana at Chandigarh in FAO No. 4219 of 2005 (O&M)

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WITH

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C. A. No.9007 of 2017.

Sanjay Kumar Dubey, Ms. Shuchi Singh, Krishan Kant Dubey, Devendra Kumar Shukla, Chandan Kumar Pandey, Advs. for the Appellant.

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Gagan Gupta, Ananta Prasad Mishra, Advs. for the Respondents.

The Judgment of the Court was delivered by

KURIAN, J. 1. Leave granted.

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2. The learned counsel for the insurance company as well as the claimant are before this Court, aggrieved by the order passed by the High Court of Punjab and Haryana in FAO No. 4219 of 2005.

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3. The claimant met with an accident on 28.01.2004. His left leg below the knee was amputated. He was working as a Security Officer in Bennett & Coleman. He was aged 37 years at the time of the incident. The Tribunal awarded an amount of Rs. 6,87,000/- with interest at the rate of 9% per annum from the date of the claim petition. The High Court modified the compensation as follows :-

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(A) Pecuniary Compensation

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(i) Compensation assessed on account of medical expenses and hospitalisation	Rs. 1,14,835/-
ii) Compensation assessed on account of services of attendant, special diet and conveyance	Rs. 50,000/-
(iii) Compensation assessed on account of expenses incurred on physiotherapy and implant to set off the amputation by way of artificial limb	Rs. 1,00,000/-
(iv) Compensation assessed on account of physical disability	Rs. 8,00,000/-
(v) Compensation assessed on account of loss of earnings during hospitalisation	Rs. 1,50,000/-
(vi) Compensation assessed on account of future loss of earnings	Rs. 13,00,000/-

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(B) Non-Pecuniary Compensation

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(i) Compensation assessed on account of physical pain, mental agony and sense of wrong	Rs. 50,000/-
(ii) Compensation assessed on account of loss of pleasures of life, longevity	Rs. 1,00,000/-
(iii) Compensation assessed on account of loss of beauty	Rs. 50,000/-
Total	Rs. 27,14,835/-

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A 4. Both the learned counsel appearing for the Insurance
Company and the claimant have referred to several Judgments
extensively and have canvassed for their respective position for reduction
and enhancement, as the case may be. However, we propose to refer
only to two judgments since those two judgments have discussed the
B first principles on the method of calculation and more so, because the
latter Judgment is the latest one which has taken into consideration the
previous Judgments as well.

 5. In *Raj Kumar Vs. Ajay Kumar & Anr.* (2011) 1 SCC 343, the
Court has laid down the principle regarding assessment of future loss of
C earning due to permanent disability. The same issue was discussed in
more detail in the case of a chartered accountant in the recent judgment
in *Sandeep Khanuja Vs. Atul Dande & Anr.* (2017) 2 SCALE 314. In
the latter case, this Court has awarded compensation applying the
multiplier for the permanent disability to the tune of 70% for the Chartered
D Accountant. In *Raj Kumar's* case (supra), this Court has discussed
about the functional disability and has held that compensation would
vary from case to case depending on how much the person has been
affected as far as his earning capacity is concerned.

 6. In the case before us, it is in evidence that there is 85%
permanent disability as far as left leg is concerned. It is also in evidence
E that he had been working as a Security Officer in a reputed company
and from the evidence of Deputy Chief Manager before the Tribunal, it
has come out that "*prior to accident Gajender was doing duty in
our office established at Bahadur Shah Zafar Marg and he was in
active job and after his accident when he joined the duty he had
been shifted to our office established at Dariya Ganj where he has
F to do lesser work i.e. sedentary duty in which no physical work is
required. The future of employee Gajender has been sealed and he
will not be able to get any promotion in future.*"

 7. Having heard the learned counsel on both sides and having
regard to the fact that the claimant has, in fact, suffered a serious injury
G leading to amputation of the left leg below the knee and which has
certainly caused a functional disability since he had been in employment
as a Security Officer and since according to the Management, his future
promotions have been sealed, we are of the view that in the facts of this
case, the computation of compensation for the disability is also to be
H worked out by applying a multiplier. The monthly salary which the

claimant was drawing in 2004 was around Rs. 14,000/-. If the future prospects in terms of *Sarla Verma (Smt.) & Ors. Vs. Delhi Transport Corporation & Anr.* (2009) 6 SCC 121 is added, it will be Rs.21,000/- per month. Having regard to the disability suffered by the claimant, we are of the view that without any further deduction, if the total disability factor is taken as 40%, the claimant would be entitled to an amount of Rs. 8,400/- per month towards the loss of future earnings. The age being 37 years, the multiplier 15 has to be applied. Thus, the compensation towards future earnings comes to Rs. 15,12,000/- (Rupees Fifteen Lakhs and Twelve Thousand).

8. The High Court, in the pecuniary part, has awarded Rs.8 Lakhs on account of physical disability and for future loss of earnings Rs. 13 Lakhs. This is certainly a duplication. What is to be compensated is only the loss on account of disability. The said total amount of Rs. 21 Lakhs will stand substituted by Rs.15,12,000/- (Rupees Fifteen Lakhs and Twelve Thousand) and the rest of the High Court order is maintained.

9. Towards the claim for change of artificial limb at least once in two years, we are of the view that it will be just and proper that a further amount of Rs.2,00,000/- (Rupees Two Lakhs) is awarded. These appeals are thus disposed of by holding that the claimant shall be entitled to a total compensation of Rs. 23,26,835/- (Rupees Twenty Three Lakhs Twenty Six Thousand Eight Hundred and Thirty Five). The claimant shall also be entitled to interest at the rate of 8% from the date of the claim petition.

No costs.