

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserve on : 10<sup>th</sup> February, 2012  
Date of decision : 16<sup>th</sup> March, 2012

+ **MAC.APP.No.414/2007**

THE ORIENTAL INSURANCE CO. LTD. ....Appellant  
Through : Mr. Pankaj Seth and Mr. M.K.  
Tiwari, Advs.

versus

ANIL KUMAR SHARMA & ANR. ....Respondents  
Through : Mr. Anil Agarwal, Adv.  
for R-1.

+ **MAC.APP.No.476/2007**

ANIL KUMAR SHARMA ....Appellant  
Through : Mr. Anil Agarwal, Adv.

versus

ROHIT MIDHA & ANR. ....Respondents  
Through : Mr. Pankaj Seth and Mr. M.K.  
Tiwari, Advs.

**CORAM :-**  
**THE HON'BLE MR. JUSTICE J.R. MIDHA**

### **JUDGMENT**

1. The parties have challenged the award of the Claims Tribunal whereby the compensation of ₹12,80,000/- has been awarded to the claimant, Anil Kumar Sharma. The appellant in MAC.APP.No.414/2007 is seeking reduction of the award amount whereas the appellant in MAC.APP.No.476/2007 is seeking enhancement of the award amount.

2. The claimant, a mechanical engineer aged 32 years at

the time of the accident, suffered 75% permanent disability in relation to his whole body in the accident dated 27<sup>th</sup> October, 2004. The Claims Tribunal took the loss of earning capacity of the claimant to be 50% and awarded ₹5,00,000/- towards loss of income due to permanent disability, ₹70,000/- towards pain and suffering, ₹30,000/- towards medical expenditure, ₹20,000/- towards special diet, ₹50,000/- towards conveyance, ₹1,60,000/- towards attendant charges, ₹2,50,000/- towards loss of income during treatment and ₹2,00,000/- towards loss of amenities of life. The total compensation awarded is ₹12,80,000/-.

3. The learned counsel for the appellant in MAC.APP.No.476/2007 seeks enhancement of compensation on the following grounds:-

- (i) The loss of earning capacity of the claimant be increased from 50% to 100%.
- (ii) The income of the claimant be taken as ₹20,000/- per month to compute the loss of earning capacity.
- (iii) The compensation for pain and suffering be enhanced.
- (iv) The compensation for medical treatment, special diet, conveyance and attendant charges be enhanced.

4. The learned counsel for the appellant in MAC.APP.No.414/2007 seeks reduction of the award amount on

the following grounds:-

(i) The claimant has not proved the income and, therefore, the minimum wages be taken into consideration for computation of loss of income due to permanent disability.

(ii) The future prospects should not be taken into consideration.

(iii) 1/3<sup>rd</sup> should be deducted from the income of the claimant for computing the loss of earning capacity.

(iv) The claimant has not proved the attendant charges.

5. The claimant appeared in the witness box as PW-1 and deposed that he was self-employed as an engineer at the time of the accident and was working under the name and style of S.R. Engineering Equipments earning approximately ₹20,000/- per month. He further deposed that he could not work after the accident as he has lost co-ordination of both his hands and could not close his fists. The wife of the claimant also appeared in the witness box as PW-2 and deposed that the claimant was a diploma holder in auto-engineering and was initially employed in Neptune Equipment Private Limited at a salary of ₹9,000/- per month and thereafter with Rdevis Engineers Private Limited at a salary of ₹9,000/- to ₹10,000/- per month. The claimant thereafter started his own business in which he was earning approximately ₹20,000/- to ₹22,000/-

per month. She further deposed that the claimant has not been able to resume the work after the accident. The service record of the claimant was proved as Ex.PW2/5. Ex.PW3/6 is the statement of account of S.R. Engineering Equipments for the period from 1<sup>st</sup> October, 2003 to 26<sup>th</sup> July, 2005. The letter dated 10<sup>th</sup> May, 2002 of Rdevis Engineers Private Limited has also been placed on record. The brother of the claimant also appeared in the witness box as PW-3 and proved the bank statement of S.R. Engineering Equipments as Ex.PW3/6 for the period 1<sup>st</sup> October, 2003 to 26<sup>th</sup> July, 2005.

6. As per the disability certificate, Ex.PW4/1, the permanent disability of the claimant has been assessed to be 75% in respect of his whole body and his condition is likely to change with the passage of time and the re-assessment was recommended after three years from the date of the assessment. The Claims Tribunal took the loss of earning capacity of the claimant to be 50%. The claimant is claiming the loss of his earning capacity to be 100% on the ground that he is unable to do any work. Ex.PW4/1 was issued on 2<sup>nd</sup> February, 2007 and the period of three years is already over after the date of disability certificate. In view of the assessment made in Ex.PW4/1 that the claimant's condition was likely to change with the passage of time and the re-

assessment was recommended after three years, this Court is of the view that the claimant should again be examined by the Board and his present condition should be ascertained. In that view of the matter, the Medical Superintendent of All India Institute of Medical Sciences is directed to convene a Board to re-assess the claimant's condition and to submit a certificate with respect to his present condition within a period of three months. The claimant is directed to submit the relevant documents to the Medical Superintendent within a period of four weeks.

7. Since the claimant's case has to be re-assessed by All India Institute of Medical Sciences, this Court is of the view that the fresh disability certificate be considered by the Claims Tribunal.

8. In the facts and circumstances of this case, both appeals are allowed and the case is remanded back to the Claims Tribunal for fresh adjudication. The pending application is disposed of.

9. The claimant is permitted to lead additional evidence after receipt of the fresh disability certificate. The Claims Tribunal shall also provide an opportunity to the respondent to rebut the additional evidence to be led by the claimants. The Claims Tribunal shall pass a fresh award after considering all

the grounds raised by the parties.

10. The appellant in MAC.APP.No.414/2007 has deposited the entire award amount before the Claims Tribunal out of which 50% amount along with interest has been released to the claimant. Subject to the final outcome, the remaining amount deposited by the appellant shall remain in Fixed deposit with the Claims Tribunal but the monthly interest thereon shall be paid to the claimants by transferring the same to the claimant's bank account. The Claims Tribunal shall pass appropriate order in this regard within a period of four weeks.

11. The statutory amount deposited by the appellant in MAC.APP.No.414/2007 be returned back to the appellant.

12. Both the parties shall appear before the Claims Tribunal on 4<sup>th</sup> July, 2012 when the Claims Tribunal shall fix a date for recording of the additional evidence. The LCR be sent back forthwith.

13. Copy of this judgment be sent to the Medical Superintendent, All India Institute of Medical Sciences. The Medical Superintendent shall intimate the date for examination of the claimant to the claimant by registered AD post.

**MARCH 16, 2012**

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**J.R. MIDHA, J**