

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

Date of decision: 1st March, 2012

+ **MAC.APP. 708/2011**

NATIONAL INSURANCE CO LTD Appellant
Through: Mr.L.K.Tyagi, Advocate

versus

GURMEET SINGH & ORS Respondents
Through: Mr.R.S.Juneja, Advocate for
R-1

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant seeks reduction of compensation of ₹ 35,23,328/- awarded to the Respondent No.1 who suffered serious injuries in an accident which occurred on 07.10.2004. The Claims Tribunal by a judgment dated 06.05.2011 granted the compensation under various heads which can be tabulated as under:-

<i>Compensation under different heads</i>	<i>Awarded by the Claims Tribunal</i>
<i>Treatment Expenses</i>	₹2,07,338/-
<i>Pain & Sufferings</i>	₹75,000/-
<i>Special Diet</i>	₹25,000/-

<i>Conveyance</i>	₹9,190/-
<i>Attendant's Charges</i>	₹2,61,000/-
<i>Future attendant's Charges</i>	₹8,64,000/-
<i>Loss of Income</i>	₹6,47,800/-
<i>Disability</i>	₹14,39,000/-
<i>Total</i>	₹.35,28,328/-

2. It is urged by the learned counsel for the Appellant that there is duplication in the award as both the attendant charges for 79 months amounting to ₹2,61,000/- and the future attendant charges amounting to ₹8,64,000/- have been awarded. It is submitted that the Respondent No.1 was awarded a sum of ₹6,47,800/- towards loss of income for 79 months at the same time he was awarded a compensation of ₹14,39,000/- towards loss of earning capacity on account of disability.

3. The Respondent No.1 suffered head injuries in the accident. He suffered Hemiplegia of the left side of the body resulting into 75% permanent disability. It is not in dispute that the Appellant was unable to move for 79 months and that is why loss of income of ₹6,47,800/- was awarded by the Tribunal. In *Raj Kumar v. Ajay Kumar & Anr., 2011 (1) SCC 343* it was held by the Supreme Court that apart from the extent of permanent disability the Court has to consider the functional disability affecting the loss of earning capacity. In this case the Appellant has suffered permanent disability which has incapacitated him to carry out his profession throughout his life.

Though the permanent disability has been assessed to be only 75% but since the First Respondent is unable to move and there are hardly any chance that he can move or in any case attend to his work the permanent disability should have been considered as affecting 100% loss of his earning capacity.

4. The respondent No.1 was employed as a Purchase Manager with Nanak Food Industries. He worked there as such from 02.07.1996 to 03.04.2004. His last drawn salary from Nanak Food Industries was ₹7,000/- per month. Thereafter he joined Queen Distilleries and Bottles Pvt. Ltd. at a salary of ₹8,200/-. On the date of the accident he was working in Queen Distilleries and Bottles Pvt. Ltd. company. It is evident that the Respondent No.1 had good future prospects. He was in stable employment and shifted to Queen Distilleries and Bottles Pvt. Ltd. for better prospects. Although, the Claims Tribunal erred in granting him compensation on account of loss of income and on account of loss of earning capacity separately but when he had suffered permanent disability which incapacitated him to carry out any work he ought to have been awarded compensation on the basis of his actual income plus future prospects on the date of the accident. Similarly, the attendant charges ought to have been granted on the basis of multiplier since the date of the accident. After deducting a sum of ₹ 8400/- towards income tax, adding 50% towards future prospects and adopting a multiplier of 15 suitable to the age of Respondent No.1 the compensation on account of loss of earning capacity would come to ₹ 20,25,000/- Rs.(8200x12-

8400(income tax)+50%x15). The compensation on account of attendant charges on applying similar multiplier of 15 on the wages of a skilled worker on the date of accident i.e. ₹ 3318 would come to ₹ 5,97,240/- (₹ 3318x12x15).

5. Although the Appellant proved bills Ex.PW-5/A of ₹2,50,000/- for having taken Physiotherapy but the same were declined by the Claims Tribunal on the ground that PW-6 Dr.Sushil Singh, Senior Resident, Department of Physical Medicine and Rehabilitation was silent about this. The bills having been proved the same ought to have been allowed. Moreover, the Court could have taken a judicial notice of the fact that a person who has suffered Hemiplegia needs constant physiotherapy to move his body parts. I would, therefore, award a further sum of ₹50,000/- towards future treatment and physiotherapy.

6. In *Raj Kumar (supra)* it was held that when a compensation of more than 50% towards loss of earning capacity on account of permanent disability is awarded, a notional sum should be awarded towards loss of amenities in life. The Claims Tribunal has not awarded any compensation under this head. I would award a compensation of ₹ 20,000/- towards loss of amenities in life. The compensation awarded is tabulated as under:-

<i>Compensation under different heads</i>	<i>Awarded by the Claims Tribunal</i>	<i>Awarded by this Court</i>
<i>Treatment Expenses</i>	₹ 2,07,338/-	₹ 2,07,338/-
<i>Pain & Sufferings</i>	₹ 75,000/-	₹ 75,000/-
<i>Special Diet</i>	₹ 25,000/-	₹ 25,000/-

<i>Conveyance</i>	₹9,190/-	₹9,190/-
<i>Attendant's Charges</i>	₹2,61,000/-	Nil
<i>Future attendant's Charges</i>	₹8,64,000/-	₹5,97,240/-
<i>Loss of Income</i>	₹6,47,800/-	Nil
<i>Disability</i>	₹14,39,000/-	Nil
<i>Loss of Earning Capacity</i>	Nil	₹20,25,000/-
<i>Loss of Amenities</i>	Nil	₹20,000/-
<i>Physiotherapy as per Bill</i>	Nil	₹2,50,000/-
<i>Future treatment and Physiotherapy</i>	Nil	50,000/-
Total	Rs.35,28,328/-	₹32,58,768/- ,

7. The excess compensation of ₹2,69,560/- along with proportionate, interest and the interest accrued during the pendency of the Appeal shall be refunded to the Appellant/Insurance Company. Statutory amount shall also be refunded.

8. The Appeal is allowed in above terms.

(G.P. MITTAL)
JUDGE

MARCH 01, 2012

mr