

The New India Assurance Co. Ltd. vs Gajender Yadav And Ors. on 13 July, 2017

Equivalent citations: AIRONLINE 2017 SC 495

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Bench: R. Banumathi, Kurian Joseph

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RE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9006 OF 2017
[@ SPECIAL LEAVE PETITION (C) NO. 25827 OF 2015]

THE NEW INDIA ASSURANCE CO. LTD.

Appellant (

VERSUS

GAJENDER YADAV AND ORS.

Respondent (

WITH

CIVIL APPEAL NO. 9007 OF 2017
[@ SPECIAL LEAVE PETITION (C) NO. 35084 OF 2015]

J U D G M E N T

KURIAN, J.

1. Leave granted.

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.

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 :-

(A) Pecuniary Compensation

(i) Compensation assessed on Rs. 1,14,835/-

account of medical expenses and hospitalisation

ii) Compensation assessed on Rs. 50,000/-

account of services of
attendant, special diet and
conveyance

(iii) Compensation assessed on Rs. 1,00,000/- account of expenses incurred on physiotherapy and implant to set off the amputation by way of artificial limb

(iv) Compensation assessed on Rs. 8,00,000/- account of physical disability

(v) Compensation assessed on Rs. 1,50,000/- account of loss of earnings during hospitalisation

(vi) Compensation assessed on Rs. 13,00,000/-

account of future loss of
earnings

(B) Non-Pecuniary Compensation

(i) Compensation assessed on Rs. 50,000/-

account of physical pain, mental agony and sense of wrong

(ii) Compensation assessed on Rs. 1,00,000/- account of loss of pleasures of life, longevity

(iii) Compensation assessed on Rs. 50,000/-

account of loss of beauty

Total

Rs. 27,14,835/-

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 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 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 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 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 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 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 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.

.....J. [KURIAN JOSEPH]J. [R. BANUMATHI] New Delhi;

July 13, 2017.