



Serial No.	Date	Order (s) with Signature (s)
1	2	3
02.	20.03.2012	<p style="text-align: center;"><b><u>BEFORE</u></b></p> <p style="text-align: center;"><b>HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE</b></p> <p>Present : Mr. A. K. Upadhyaya, Senior Advocate with Ms. Binita Chhetri and Ms. Mukul R. Parajuli, Advocates for the Appellant.</p> <p>Mr. Ajay Rathi, Advocate with Ms. Sushma Pradhan and Mr. Rahul Rathi, Advocate for Respondent No.1.</p> <p>Mr. Dorjee Dadul Bhutia, Advocate for the Proforma Respondent.</p> <p style="text-align: center;">----</p> <p>The short point involved in this Appeal, on the admitted facts of the parties and also on the finding of the Learned Motor Accident Claims Tribunal, is in the computation of the amount of compensation on an erroneous application of the Schedule to the Motor Vehicles Act, 1988. We need not go into the merits of Appeal in view of the fact that the Learned Counsel for the Respondent No.1 has conceded to the error.</p> <p>Upon consideration of Entry 5 of Second Schedule of the Motor Vehicles Act, 1988, and Entry 3 of Part II of the Schedule I to the Workmen's Compensation Act, 1923, it appears that the stand of the Learned Counsel appear to be justified. Considering the nature of the disability in the present case that involves amputation of his right arm, the disability suffered by the Claimant-Respondent No.1 thereby clearly falls under Clause (b) of Entry 5 of Second Schedule to the Motor Vehicles Act, 1988, which reads as under:-</p> <p style="text-align: center;"><b>"5. Disability in non-fatal accidents:</b></p> <p style="text-align: center;">.....</p> <p style="text-align: center;">(b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) above.</p> <p style="text-align: center;">....."</p> <p style="text-align: right;"><b>Contd.....</b></p>

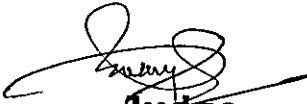


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		<p>The Learned Motor Accident Claims Tribunal has assumed the disability as 100% permanent partial disablement and, therefore, has computed the compensation based upon the multiplier applicable to the age of the Claimant-Respondent No.1. While doing so, the Learned Motor Accident Claims Tribunal appears to have over-looked the fact that the percentage of disability has been clearly indicated in the Pass Book of Disabled Persons of the Social Welfare Division, Social Welfare Department, Government of Sikkim, Exhibit 9, at Serial No.14 of the entries contained therein.</p> <p>Under such circumstances, the appropriate course for the Learned Claims Tribunal to have adopted was to take resort to Entry No.3 of Part II of Schedule I to the Workmen's Compensation Act, 1923, which is reproduced below:-</p> <p style="text-align: center;"><b>"PART II</b> <b>LIST OF INJURIES DEEMED TO RESULT IN</b> <b>PERMANENT PARTIAL DISABLEMENT</b></p> <table><tr><th>Serial No.</th><th>Description of Injury</th><th>Percentage of loss of earning capacity</th></tr><tr><td colspan="3"><i>Amputation cases-upper limbs (either arm)</i></td></tr><tr><td colspan="3">.....</td></tr><tr><td>3</td><td>Amputation from [20.32 Cms.] from tip of acromion to less than [11.43 Cms.] below tip of olecranon.</td><td>70</td></tr><tr><td colspan="3">....."</td></tr></table> <p>This is also prescribed at the end of Entry 5 of Second Schedule to the Motor Vehicles Act, 1988, which reads as under:-</p> <p style="text-align: right;"><b>Contd.....</b></p>	Serial No.	Description of Injury	Percentage of loss of earning capacity	<i>Amputation cases-upper limbs (either arm)</i>			.....			3	Amputation from [20.32 Cms.] from tip of acromion to less than [11.43 Cms.] below tip of olecranon.	70	....."		
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		<p><b>"5. Disability in non-fatal accidents:</b></p> <p>(a) .....</p> <p>(b) .....</p> <p>Injuries deemed to result in Permanent Total Disablement/Permanent Partial Disablement <u>and percentage of loss of earning capacity</u> shall be as per Schedule I under Workmen's Compensation Act, 1923." [underlining mine]</p> <p>Therefore, there can be no manner of doubt that the Learned Tribunal has committed an error in the application of the relevant Entry in the Schedule.</p> <p>In view of the above, by application of Entry 3 of Part II of Schedule I to the Workmen's Compensation Act, 1923, the compensation in favour of the Claimant-Respondent No.1 stands modified as follows:-</p> <table> <tr> <td>1.</td><td>Loss of earning</td><td>Rs.8,82,000.00</td></tr> <tr> <td>(i)</td><td>Salary Rs.7,000/- p.m x 12 months = Rs.84,000/-.</td><td></td></tr> <tr> <td>(ii)</td><td>Rs.84,000/- x 15 (multiplier) = Rs.12,60,000/-.</td><td></td></tr> <tr> <td>(iii)</td><td>70% of Rs.12,60,000/- = Rs.8,82,000/-.</td><td></td></tr> <tr> <td>2.</td><td>Medical bills/expenses</td><td>Rs. 87,016.00</td></tr> <tr> <td>3.</td><td>Pain and sufferings</td><td>Rs. 5,000.00</td></tr> <tr> <td></td><td></td><td>Rs.9,74,016.00</td></tr> <tr> <td></td><td>(-) Interim relief already paid</td><td>Rs. 25,000.00</td></tr> <tr> <td></td><td></td><td><u>Rs.9,49,016.00</u></td></tr> </table> <p>It is, however, directed that the rest of the impugned award shall stand undisturbed and the compensation thus modified shall be paid to the Claimant-Respondent No.1 within 15 days from the date of this Order.</p> <p>The Appeal stands disposed of accordingly.</p> <p style="text-align: right;"><b>Contd.....</b></p>	1.	Loss of earning	Rs.8,82,000.00	(i)	Salary Rs.7,000/- p.m x 12 months = Rs.84,000/-.		(ii)	Rs.84,000/- x 15 (multiplier) = Rs.12,60,000/-.		(iii)	70% of Rs.12,60,000/- = Rs.8,82,000/-.		2.	Medical bills/expenses	Rs. 87,016.00	3.	Pain and sufferings	Rs. 5,000.00			Rs.9,74,016.00		(-) Interim relief already paid	Rs. 25,000.00			<u>Rs.9,49,016.00</u>
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ds		<p>A copy of this Order be transmitted forthwith to the Learned Motor Accidents Claims Tribunal for compliance.</p> <div> <b>Judge</b> 20-03-2012</div> <p>Index : <input checked="" type="checkbox"/> Yes/No Internet : <input checked="" type="checkbox"/> Yes/No</p>