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

% *Judgment delivered on: 28th February, 2014*

+ **MAC.APP. 748/2011**

NATIONAL INSURANCE CO LTD. Appellant
Represented by: Mr. Manoj R. Sinha, Adv.

Versus

AJEET SINGH @ JEET SINGH & ORS Respondents
Represented by: Mr. Navneet Goyal, Adv.
for R1

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. The present appeal has been preferred against the impugned award dated 20.04.2011 whereby Ld. Tribunal awarded compensation as under:

“NON PECUNIARY DAMAGES:

- | | | | |
|----|--|---|----------------------|
| 1. | <i>Towards special diet</i> | : | <i>Rs.10,000/-</i> |
| 2. | <i>Towards conveyance allowance</i> | : | <i>Rs.10,000/-</i> |
| 3. | <i>Towards mental pain, agony,
loss of amenities of life, happiness,
frustration towards disfigurement
and enjoyment of life</i> | : | <i>Rs.2,00,000/-</i> |

PECUNIARY DAMAGES:

1.	<i>Towards functional disability</i>	:	<i>Rs.2,15,804/-</i>
2.	<i>Towards medical expenses</i>	:	<i>Rs.8673/-</i>
3.	<i>Towards not being able to do his</i>		
	<i>Duties for 6 months</i>	:	<i>Rs.23,508/-</i>
	<i>TOTAL</i>	:	<i>Rs.4,67,985/-</i>

2. Ld. Counsel appearing on behalf of the appellant submits that respondent no. 1 / injured received 53% disability due to the injuries received in the accident. Certificate of the same has been proved by PW3, Dr. Dhruba Narayan Borah vide Ex.PW1/48.

3. He further submits that the disability was towards left lower limb. However, the Ld. Tribunal has considered 27% as functional disability which is on higher side.

4. Ld. Counsel further submits that towards non-pecuniary damages qua mental pain, agony, loss of amenities of life, happiness, frustration towards disfigurement and enjoyment of life, an amount of Rs.2,00,000/- was granted which is also on a very higher side.

5. On the other hand, ld. Counsel appearing on behalf of respondent no. 1 / injured submits that Ld. Tribunal has rightly assessed the functional disability keeping in view the dictum of ***Raj Kumar v. Ajay Kumar and Anr. (2011)ISCC343.***

6. Ld. Counsel further submits that Ld. Tribunal has rather awarded less amount of Rs.2,00,000/- towards mental agony, loss of amenities of life, happiness, frustration towards disfigurement and enjoyment of life.

7. Ld. Counsel further submits that at the time of accident, respondent no. 1 / injured was 30 years of age and was working in a factory under the name and style of M/s. Rishab Cables and was earning Rs.3,800/- per month. The respondent no. 1 / injured sustained grievous injuries. A rod was inserted below knee and for the fracture above knee, weight was tied to pull fractured leg back in place. The details of the treatment have been mentioned in the summary of the treatment. The injured received fracture below and above knee and operation was performed.

8. Since respondent no. 1 / injured was from the labour class and received 53% disability, I am of the considered opinion that Ld. Tribunal has rightly considered 27% functional disability in view of the dictum of ***Raj Kumar (Supra)***.

9. As far as the issues of non-pecuniary heads are concerned, Ld. Tribunal has awarded lump sum amount of Rs.2,00,000/- towards mental agony, loss of amenities of life, happiness, frustration towards disfigurement and enjoyment of life.

10. Keeping in view the avocation of the injured and the injuries received in the accident, as mentioned above, I do not find any merit in the instant appeal. Same is accordingly dismissed.

11. Accordingly, the statutory amount along with excess amount with proportionate interest be released in favour of the appellant and balance compensation amount be released in favour of the respondents / claimants on taking steps by them.

CM. NO. 15618/2011

With the disposal of the instant appeal itself, instant application has become infructuous and disposed of as such.

SURESH KAIT, J

FEBRUARY 28, 2014

Jg/RS