

SUPREME COURT OF INDIA

Ashok

Vs.

United India Insurance Co.Ltd.

C.A.No.4704 of 2008

(R.V. Raveendran J.)

25.07.2008

ORDER

1. Leave granted. Heard both sides.

2. The appellant sustained fractures of the right humerus in a motor accident. It required hospitalization, surgery and insertion of a rod. There was a resultant limited flexion disability at elbow and shoulder. The Tribunal awarded Rs.43,470/- as compensation (with interest at 6% P.A.) made up of Rs.15,000/- towards pain & agony, Rs.12,870/- for medical expenses, Rs.1600/- for loss of income during the period of treatment, Rs.2000/- for future medical expenses, Rs.10,000/- for loss of amenities and earning capacity and Rs.2,000/- for special diet & nourishment.

3. On appeal by the appellant, the High Court increased the compensation under the head of loss of amenities and future loss of earning capacity by Rs.20,000/-. Thus, the total compensation stood increased to Rs.63,470/-.

4. Appellant is not satisfied with the increase. According to him, he was working as a driver before the accident and on account of the accident and resultant disability he could not drive. He, therefore, contends that the compensation should have been awarded by calculating the loss of future earnings with reference to loss of income as a driver.

5. Learned counsel for the Insurance Company rightly pointed out that no evidence has been placed that he held a driving licence and no medical evidence was placed to show that there was any permanent disability as a result of which the appellant could not drive. In the circumstances, it may not be possible to consider this as a case of permanent economic disability as a result of the injuries.

6. However, we find that that compensation awarded under three heads requires to be revised. The sum awarded under the head of pain and sufferings is very low. On the evidence showing fracture of right arm necessitating surgery, insertion of rod and hospitalization, as also probable subsequent surgery for removal of the rod, we are of the view that Rs.35,000/-

ought to have been awarded for pain & sufferings instead of Rs.15,000/-. The awards under the heads of future medical expenses and loss of future earning capacity should be increased by Rs.10,000/- each. Thus, the compensation is increased by Rs.40,000/-. Total compensation will therefore be Rs.1,03,470/-.

7. Appeal is allowed in part. The increased compensation of Rs.40,000/- with interest @ 6% p.a. from the date of filing of the petition till the date of deposit, shall be deposited by the respondents within two months.