

Date of Decision: 8th December, 2009

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+ MAC.APP. 368/2007

MAHESH GARG Appellant
Through : Mr. O.P. Mannie, Adv. along
with the appellant.

versus

JUMME KHAN & ORS Respondents
Through : Mr. Mirza Aslam Beg, Adv.
for Ms. Sonia Sharma, Adv.
for R-3.

+ MAC.APP. 374/2007

DIVYA GARG Appellant
Through : Mr. O.P. Mannie, Adv. along
with the appellant.

versus

JUMME KHAN & ORS Respondents
Through : Mr. S.L. Gupta, Adv. for R-3.

**CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA**

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| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | YES |
| 2. | To be referred to the Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

JUDGMENT (Oral)

1. The appellants have challenged the award of the learned Tribunal whereby compensation of Rs.4,10,000/- has been awarded in MAC.APP.No.374/2007 and Rs.1,00,000/- has been awarded in MAC.APP.No.368/2007. The appellant

in both the appeals seeks enhancement of the award amount.

2. The accident dated 17th February, 2004 resulted in injuries to Divya Garg and Mahesh Kumar Garg.

3. On 17th February, 2004 at about 11:40pm, Mahesh Garg was driving two-wheeler scooter bearing No.DL-1SJ-4727 and his daughter Divya Garg was sitting on the pillion. When the scooter reached Shakti Nagar Chowk, G.T. Road, Delhi, the scooter was hit by a truck bearing No.HR-38G-8831 resulting in grievous injuries to the claimants.

MAC.APP.No.374/2007

1. Divya Garg was aged about 19 years at the time of the accident and was a student of 2nd year B.Sc (Hons.) in Computer Science in Sahid Sukhdev College of Business Studies at Vivek Vihar and was also taking coaching classes for M.B.A. entrance examination. The appellant suffered degloving injuries of low abdomen measuring 20 x 10 cms, fracture right iliac crest, a big lacerated wound crush type transverse in whole of lower abdomen and abdominal contents were exposed. The appellant was taken to Sushruta Trauma Centre for first aid and was immediately shifted to LNJP Hospital where she remained for 31 days and was discharged on 18th March, 2004. On 8th July, 2004, the appellant was admitted to Safdarjung Hospital for 12 days for treatment of split skin grafting (SSG) and poly traumatic raw area (PTRA). She was discharged on 19th July, 2004 and she

continued as OPD patient till 25th August, 2004. The appellant thereafter took treatment from Sant Parmanand Hospital and LNJP Hospital. On 31st May, 2005, the appellant was admitted in Apollo Hospital where she underwent mesh hernioplasty surgery and was discharged on 7th June, 2005. The temporary disablement of Divya has been assessed by the Board constituted by LNJP Hospital as 10%.

2. The learned Tribunal has awarded Rs.2,08,323.57 towards the expenditure on treatment. Rs.7,500/- towards special diet, Rs.12,500/- towards conveyance, Rs.18,000/- towards attendant charges and Rs.30,000/- towards future treatment. The learned Tribunal has awarded Rs.55,000/- towards pain and suffering and Rs.75,000/- towards loss of amenities of life.

3. The learned counsel for the appellant has urged the following grounds at the time of hearing of this appeal for enhancement of compensation in respect of Divya Garg:-

- (i) Compensation be awarded for loss of matrimonial prospects.
- (ii) Compensation be awarded for loss of one year for the education of the appellant.
- (iii) Compensation be awarded for loss of Rs.6,450/- towards fees for MBA coaching which the appellant could not take;
- (iv) Compensation be awarded for loss of earned leave for 101 days suffered by the mother of the

appellant for attending the appellant during the period of her treatment.

4. The appellant suffered grievous injuries due to the accident in question and she remained in treatment for period of two years and the injuries suffered by her have left permanent scar on the abdomen and the thigh region which have resulted in disfiguration. The appellant was 19 years old at the time of the accident. The appellant is presently 25 years old and still unmarried. Considering the reduction of marriage prospects, Rs.1,00,000/- is awarded to the appellant under this head.

5. The appellant was a student of 2nd year B.Sc (Hons.) in Computer Science at the time of the accident. She could not pursue the studies due to the accident and suffered loss of one year of education which is sufficiently proved by Ex.PW4/170 to Ex.PW4/173. The learned Tribunal has not considered this aspect and no compensation has been awarded under this head. Rs.30,000/- is awarded to the appellant for loss of one year of her education.

6. The appellant had deposited Rs.6,450/- with Time Education (P) Limited for taking classes for M.B.A. entrance test which has been duly proved by Ex.PW4/174. The learned Tribunal has not awarded any compensation under this head. Rs.6,450/- is awarded to the appellant for loss of fee paid by her to Time Education (P) Limited as she could not take the classes due to the injuries suffered in the

accident.

7. The appellant's mother is a Government servant and she took earned leave for 101 days and she claimed the said amount towards the loss suffered by her mother due to the accident in question. The learned Tribunal has not awarded any compensation under this head on the ground that the compensation of Rs.18,000/- has been given for one attendant.

8. The learned counsel for the appellant submits that apart from the attendant, the mother took earned leave for take care of the appellant. The earned leave of 101 days taken by the appellant was proved as Ex.PW4/176 to Ex.PW4/178. The salary of the mother of the appellant at the time of the accident was Rs.11,598/- per month duly proved by Ex.PW4/176. However, the appellant would have been entitled to basic + D.A. as earned leave which is Rs.8,400/- per month. Rs.25,200/- (Rs.8,400 x 3) is awarded for loss suffered by the appellant's mother towards the earned leave taken by her mother for taking care of the appellant.

9. The appellant is entitled to enhancement of Rs.1,61,650/- (Rs.1,00,000/- for reduction of matrimonial prospect, Rs.30,000/- for loss of one year of education, Rs.6,450/- for loss of fee for M.B.A. coaching classes paid by her to Time Education (P) Limited, Rs.25,200/- for loss suffered by the appellant's mother towards the earned leave taken by her mother for taking care of the appellant) towards

the compensation awarded to her.

10. The appeal is allowed and the award amount is enhanced from Rs.4,10,000/- to Rs.5,71,650/- (Rs.1,61,650 + Rs.4,10,000) along with interest @ 8% per annum from the date of filing of the petition till realization.

11. The enhanced award amount along with interest be deposited by respondent No.3 with UCO Bank, Delhi High Court Branch A/c Divya Garg within 30 days.

12. Upon the aforesaid deposit being made, the UCO Bank is directed to release the same to the appellant without any restriction of fixed deposit.

MAC.APP.No.368/2007

1. Mahesh Garg suffered head injuries, fracture of right occipital bone, thin SDH right occipital origin and multiple abrasions and blunt injuries due to the accident. He was initially take to Sushruta Trauma Centre from where he was shifted to LNJP hospital where he remained admitted for 14 days and thereafter continued as O.P.D. patient for about one year. The learned Tribunal awarded Rs.1,00,000/- in respect of the injuries suffered by the appellant in the accident which includes compensation of Rs.10,000/- for medical treatment, Rs.5,000/- for special diet, Rs.5,000/- for conveyance, Rs.40,000/- for pain and suffering, Rs.14,500/- for loss on account of 30 days leave, Rs.25,500/- for loss of amenities of life and general damages.

2. The learned counsel for the appellant has urged

following grounds at the time of hearing of this appeal.

- (i) The appellant took 89 days earned leave and 11 days casual leave against which the learned Tribunal has awarded compensation for only 30 days leave.
- (ii) Compensation for pain and suffering be enhanced.
- (iii) Compensation be also awarded for future treatment.

3. The appellant has proved the earned leave of 89 days by Ex.PW3/70. The salary of the appellant at the time of the accident was Rs.13,210. However, the appellant would have been entitled to basic + D.A. as earned leave which is Rs.14,387.71 and the earned leave for 89 days comes to Rs.43,145/- $[(Rs.13,210 + Rs.1,171.71) \times 3]$. The compensation of Rs.14,500/- for loss on account of 30 days leave is enhanced to Rs.43,145/- on account of loss of 89 days leave.

4. The learned Tribunal has awarded Rs.40,000/- for pain and suffering and Rs.25,000/- for loss of amenities of life and general damages which is just, fair and reasonable.

5. The learned Tribunal has not awarded any compensation for future treatment. The learned counsel for the appellant submits that the appellant is spending approximately Rs.300/- per month on the future treatment. It is submitted that the appellant is regularly taking medicines and the injuries suffered by the appellant in the

accident have not been fully cured.

6. Considering the injuries suffered by the appellant, Rs.10,000 is awarded towards the future treatment.

7. The appeal is allowed and the award amount is enhanced from Rs.1,00,000/- to Rs.1,38,645/- (Rs.43,145 + Rs.10,000 + Rs.10,000 + Rs.5,000 + Rs.5,000 + Rs.40,000 + Rs.25,500) along with interest @ 8% per annum from the date of filing of the petition till realization.

8. The enhanced award amount along with interest be deposited by respondent No.3 with UCO Bank, Delhi High Court Branch A/c Mahesh Garg within 30 days.

9. Upon the aforesaid deposit being made, the UCO Bank is directed to release the same to the appellant without any restriction of fixed deposit.

10. Copy of this order be given 'Dasti' to learned counsel for both the parties under signature of Court Master.

J.R. MIDHA, J

DECEMBER 08, 2009
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