

+ MAC.APP.No.41/2007Date of Decision: 26th November, 2009

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KANTA KUMARI @ KANTA CHAWLA Appellant
Through : Mr. Ram Kavar, Adv.

versus

AJIT SINGH & ORS. Respondents
Through : Mr. Manoj Ranjan Sinha and
Mr. Anand Nandan, 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 appellant has challenged the award of the learned Tribunal whereby compensation of Rs.7,43,565/- has been awarded to the appellant. The appellant seeks enhancement of the award amount.

2. The accident dated 23rd November, 2004 resulted in grievous injuries to the appellant. The appellant was standing on the bus stop when a blue line Mudrika bus bearing No.DL-1P-A-6170 came from behind and crushed the appellant's right leg under its wheel. The appellant suffered fracture in lower end of fibula and degloving of skin besides a lacerated wound on left foot due to the accident. The

injuries in the accident exposed underlying fat and muscle of right leg below knee, swelling of right foot and lacerated wound on left foot and degloving injury on left heel. The Medical Board issued the disability certificate - Ex.PW1/24 certifying the permanent disability of the appellant to be 65%. The appellant is present in the Court and her injuries have been seen by the Court as well as counsel for respondent No.3.

3. The appellant was working as a Head Mistress in Government High School, Sehatpur (Faridabad) drawing a salary of Rs.18,585/- which was duly proved before the learned Tribunal as Ex.PW1/5. The appellant remained on leave without pay for about 15 months which was also duly proved by a certificate from the school.

4. The learned Tribunal disbelieved the salary certificate proved by the appellant on the ground that the document was self-attested and not certified by District Education Officer. The learned Tribunal took the income of the appellant as Rs.6,000/- per month and the loss of income was awarded for only five months against the actual leave of 15 months to the appellant and the loss of income was also computed by taking the salary of Rs.6,000/- per month.

5. The appellant led additional evidence before this Court by examining the Head Master of Government High School, Sehatpur (Faridabad) who appeared in the witness box as AW-2 and proved the salary certificate – Ex.AW2/1 as well as

the certificate – Ex.CW1/Z towards the medical leave without pay for five months. In view of the grievous injuries suffered by her, the appellant was unable to continue the job and took voluntary retirement. The appellant is now getting a pension of about Rs.8,000/- per month.

6. The appellant has suffered 65% disability. Considering the nature of injuries suffered, she was unable to continue her job and, therefore, her loss of income is taken to be 100%. The income of the appellant is taken to be Rs.18,585/- per month. Since the appellant is getting pension of about Rs.8,000/- per month, the loss of income is taken to be Rs.10,000/- per month after deducting the pension being received by her. The appellant was aged 55 years at the time of the accident and the multiplier of 5 is applied to compute the loss of income at Rs.6,00,000/- (Rs.10,000 X 12 X 5). The appellant remained on medical leave without pay for five months and, therefore, the loss of income is taken to be Rs.92,925/- (Rs.18,585x 5).

7. The learned Tribunal has awarded Rs.25,524/- towards medical expenditure, Rs.13,475/- towards pathological tests, Rs.1,77,174/- towards hospitalization charges, Rs.6,922/- towards ambulance charges and Rs.6,000/- towards attendant charges. The said amount is fair and reasonable considering the evidence led by the appellant before the learned Tribunal.

8. The learned Tribunal has not awarded any

compensation towards future expenses. No evidence has been led with respect to the future expenses and, therefore, the appellant is not entitled to any amount towards future expenses.

9. The learned Tribunal has awarded a sum of Rs.50,000/- towards pain and suffering, Rs.40,000/- towards loss of amenities of life and injuries and Rs.20,000/- towards disfiguration of leg.

10. The appellant is entitled to non-pecuniary damages under following four heads:-

- (i) Compensation on account of pain and suffering
- (ii) Compensation on account of loss of amenities of life.
- (iii) Compensation on account of disfiguration.

11. In the case of **Oriental Insurance Co. Ltd. vs. Vijay Kumar Mittal & Ors., 2008 ACJ 1300**, this Court examined all the previous judgments with respect to the non-pecuniary compensation awarded in the case of permanent disability and held that the Courts have been awarding about Rs.3,00,000/- under the heads of non-pecuniary damages for amputation of leg with permanent disability of 50% and above. The findings of this Court are reproduced hereinunder:-

“17. From the aforementioned judicial decisions, a trend which emerges is that between the years 1985 and 1990, the courts have been awarding about Rs.3,00,000/- under the head ‘non-

pecuniary damages' for amputation of leg resulting in permanent disability of 50 per cent and above."

12. Following the aforesaid judgment, compensation of Rs.1,10,000/- awarded by the learned Tribunal towards non-pecuniary damages is enhanced to Rs.3,00,000/- which shall include the following heads:-

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| (i) | Compensation for pain and suffering | - | Rs.1,00,000/- |
| (ii) | Compensation for loss of amenities of life | - | Rs.1,00,000/- |
| (iii) | Compensation for disfiguration | - | Rs.1,00,000/- |

13. The appellant is entitled to total compensation of Rs.19,42,020/- as per the break-up given hereinunder:-

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| (i) | Loss of income | : | Rs.6,00,000/- |
| (ii) | Loss of income for five months | : | Rs.92,925/- |
| (iii) | Medical Expenditure | : | Rs.25,524/- |
| (iv) | Pathological Test | : | Rs.13,475/- |
| (v) | Hospitalization Charges | : | Rs.1,77,174/- |
| (vi) | Ambulance Charges | : | Rs.6,922/- |
| (vii) | Attendant Charges | : | Rs.6,000/- |
| (viii) | Compensation for pain and suffering | : | Rs.1,00,000/- |
| (ix) | Compensation for loss of amenities of life | : | Rs.1,00,000/- |
| (x) | Compensation for disfiguration | : | Rs.1,00,000/- |
| Total | | | Rs.12,22,020/- |

14. The learned Tribunal has awarded interest @6% per annum. Following the judgment of Hon'ble Supreme Court in the case of **Dharampal vs. U.P. State Road Transport Corporation, III 2008 ACC (1) SC**, the rate of interest is enhanced from 6% per annum to 7.5% per annum.

15. The appeal is allowed and the award amount is enhanced from Rs.7,43,565/- to Rs.12,22,020/- along with interest @ 7.5% per annum from the date of filing of the petition till realization.

16. The enhanced award amount along with interest be deposited by respondent No.3 with UCO Bank, Delhi High Court Branch A/c Kanta Kumari through Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) within 30 days.

17. Upon the aforesaid enhanced award amount being deposited, UCO Bank is directed to release a sum of Rs.1,00,000/- to the appellant by transferring the said amount to her Saving Bank Account. The remaining award amount be kept in fixed deposit for a period of five years on which monthly interest be paid to her.

18. The interest on the aforesaid fixed deposit shall be paid monthly by automatic credit of interest in the Savings Account of the appellant.

19. Withdrawal from the aforesaid account shall be permitted to the appellant after due verification and the Bank shall issue photo Identity Card to the appellant to facilitate identity.

20. No cheque book be issued to the appellant without the permission of this Court.

21. The original Fixed Deposit Receipt shall be retained by the Bank in the safe custody. However, the original Pass

Book shall be given to the appellant along with the photocopy of the FDR.

22. The original Fixed Deposit Receipt shall be handed over to the appellant at the end of the fixed deposit period.

23. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipt without the permission of this Court. 23. Half yearly statement of account be filed by the Bank in this Court.

24. On the request of the appellant, the Bank shall transfer the Savings Account to any other branch of UCO Bank according to the convenience of the appellant.

25. The appellant shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi.

26. Copy of the order be given dasti to counsel for both the parties under the signatures of the Court Master.

27. Copy of this order be also sent to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) through the UCO Bank, High Court Branch under the signature of Court Master.

J.R. MIDHA, J

NOVEMBER 26, 2009

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