

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 2nd September, 2009

versus

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.4,70,151/- has been awarded to the appellant. The appellant seeks enhancement of the award amount.
2. The accident dated 23rd July, 2002 resulted in grievous injuries to the appellant. The appellant was riding on his bicycle near Allahabad Bank, Narela Road, Delhi when he was hit by a tempo bearing No.HR-06-A-6239 due to which the appellant fell down on the road and his right hand was crushed under the front wheel of the tempo. The appellant was 16 years old at that time

and was a student of 9th standard. The right hand of the appellant up to palm and four fingers were amputated. The permanent disability was assessed as 40%.

3. The learned Tribunal awarded Rs.4,70,151/-. The break-up of the award amount is as under:-

(i)	Loss of earnings during the period of the treatment.	: Rs.7,500/-
(ii)	For the permanent disability suffered up to 40%	: Rs.25,000/-
(iii)	Loss of proportionate future earnings due to said permanent disability	: Rs.1,44,000/-
(iv)	Expenses over the medical bills	: Rs.88,651/-
(v)	Expenses over conveyance and special diet	: Rs.10,000/-
(vi)	Loss of amenities of the life	: Rs.10,000/-
(vii)	For having suffered pain and agony	: Rs.10,000/-
(viii)	Compensation towards future medical treatment	: Rs.1,75,000/-
Total		: <u>Rs.4,70,151/-</u>

4. The learned counsel for the appellant submits that loss of income of the appellant should be computed according to minimum wages at that time. The learned counsel for the appellant further seeks enhancement of compensation towards pain and suffering, loss of amenities of life and compensation towards conveyance. The learned counsel for the appellant further seeks compensation for reduction of matrimonial prospects of the appellant. The appellant also seeks compensation towards expenditure on conveyance as he is not in a position to travel by public transport.

5. The appellant was 16 years at the time of the accident. He was studying in 9th standard. Despite the amputation of right

hand up to palm and four fingers, the appellant continued his education and completed matriculation in 2003 but he could not get any employment and is running a small shop. The appellant is present in the Court and condition of his amputated hand is seen. The entire right hand up to palm and four fingers has been amputated and only one thumb is left. The appellant is not in a position to work with right hand. The amputation of right hand has also disfigured the appellant. The appellant is unmarried and his matrimonial prospects have diminished with the amputation of right hand.

6. Considering the facts and circumstances of this case, the appellant is entitled to compensation towards disfigurement as well as compensation towards reduction in matrimonial prospects. The learned Tribunal has not awarded any compensation under these two heads. Rs.50,000/- is awarded towards disfigurement and further amount of Rs.50,000/- is awarded towards loss of matrimonial prospects.

7. The learned Tribunal has awarded Rs.25,000/- towards permanent disability, Rs.1,44,000/- towards loss of income and Rs.75,000/- towards loss of income during treatment. All these three heads are treated as loss of income. The loss of income has been calculated by taking notional income of Rs.22,500/- per month. It is well settled that in such cases, the minimum wages should have been taken into consideration. The minimum wages for unskilled worker at the time of the accident were Rs.3,150/- per month. It is well settled by catena of judgments of this Court

in the cases of **Kanwar Devi vs. Bansal Roadways, 2008 ACJ 2182**, **Lekh Raj vs Suram Singh, 2007 ACJ 2165**, **National Insurance Company Limited vs. Renu Devi III (2008) ACC 134** and **UPSRTC vs. Munni Devi**, MAC.APP.No.310/2007 decided on 28.07.2008 that the judicial notice be taken of increase in minimum wages due to inflation and rise in price index and that the minimum wages get doubled over the period of 10 years and the average of minimum wages and its double be taken to compute the income of the deceased for computation of compensation. Following the aforesaid judgments, the income of the appellant is taken to be Rs.4,725/- per month [(Rs.3,150 + Rs.6,300)/2]. The appellant was aged 16 years at the time of the accident and the appropriate multiplier according to the recent judgment of the Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129** is 18. Taking the income of the appellant to be Rs.4,725/- per month and applying the multiplier of 18, the loss of income of the appellant is computed to be Rs.10,20,600/- (Rs.4,725 x 12 x 18). The appellant has suffered 40% disability. The loss of earning capacity is taken to be 40% considering that the appellant's right hand has been amputated and that the appellant was a right hander. The loss of income taking the disability to be 40% is assessed to be Rs.4,08,240/- (40% of Rs.10,20,600). The loss of income of the appellant is enhanced from Rs.1,76,500/- (Rs.1,44,000 + Rs.25,000 + Rs.7,500) to Rs.4,08,240/-.

8. The learned Tribunal has awarded Rs.88,651/- towards

expenditure on medical treatment which is fair and reasonable considering the bills submitted by the appellant and, therefore, it does not call for any interference.

9. The learned Tribunal has awarded compensation of Rs.10,000/- towards pain and suffering, Rs.10,000/- towards loss of amenities of life and Rs.10,000/- towards expenditure on conveyance and special diet. Considering the amputation of right hand and 40% disability and pain and agony suffered by the appellant, the compensation for pain and suffering is enhanced from Rs.10,000/- to Rs.25,000/-, compensation for loss of amenities of life is enhanced from Rs.10,000/- to Rs.25,000/- and compensation for conveyance and special diet is enhanced from Rs.10,000/- to Rs.20,000/-.

10. The learned Tribunal has awarded Rs.1,75,000/- towards future medical expenses. The amount under this head appears to be on a higher side. It is also noted that the appellant is unable to travel by public transport due to the amputation of right hand and, therefore, has to spend considerable amount on the conveyance for the rest of his life and, therefore, the appellant is entitled to compensation for conveyance for rest of his life due to amputation of right hand. The compensation of Rs.1,75,000/- awarded towards future medical expenses is reduced to Rs.1,00,000/- and it shall also include compensation for expenditure on conveyance for rest of his life due to the amputation of right hand.

11. The total compensation of the appellant is computed to be Rs.7,66,891/- (Rs.50,000 towards disfigurement + Rs.50,000/- towards loss of matrimonial prospects + Rs.4,08,240/- towards loss of income + Rs.88,651/- towards expenditure on medical treatment + Rs.20,000/- towards conveyance and special diet + Rs.25,000/- towards pain and suffering + Rs.25,000/- towards loss of amenities of life + Rs.1,00,000/- towards future medical expenses and future conveyance).

12. The appeal is allowed and the award amount is enhanced from Rs.4,70,151/- to Rs.7,66,891/-.

13. The learned Tribunal has awarded interest @9% per annum on Rs.2,70,151/- and no interest on Rs.1,75,000/- which is not disturbed. However, on the enhanced award amount the rate of interest shall be @7.5% per annum from the date of filing of the petition till realization. The enhanced award amount along with interest be deposited by the appellant with the UCO Bank A/c Lokesh Kumar Gupta, Delhi High Court Branch within 30 days.

14. Upon the aforesaid deposit being made, the UCO Bank is directed to open Savings Bank Account in the name of the appellant. UCO Bank is directed to release a sum of Rs.50,000/- to the appellant by transferring the said amount to his savings bank account. The remaining amount be kept in fixed deposit in the name of the appellant for a period of five years.

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

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

17. 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 FDRs.

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

19. No loan, advance or withdrawal shall be allowed on the said Fixed Deposit Receipt without the permission of this Court.

20. Half yearly statement of account be filed by the Bank in this Court.

21. On the request of the appellant, the Bank shall transfer the Savings Account to any other branch of UCO Bank in Delhi according to the convenience of the claimants.

22. 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 (Mobile No. 09310356400).

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

24. 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

SEPTEMBER 02, 2009

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