

IN THE HIGH COURT OF DELHI AT NEW DELHI**+ MAC.APP.No.162/2009**

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Date of decision: 23rd September, 2009

ATISH KUMAR NISCHAL Appellant
Through : Mr. O.P. Mannie, Adv.

versus

JASMER SINGH & ORS Respondents
Through : Mr. Kanwal Choudhary, Adv.

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

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.13,00,432/- has been awarded to him. The appellant seeks enhancement of the award amount.

2. The accident dated 25th March, 2006 resulted in the grievous injuries to the appellant. The appellant suffered Burst Fracture of D2 Vertebral body with retropulsion of fractured fragment encroaching into spinal cord, serious head injuries on right side and fracture D2, D5 with complete paraplegia with bladder and bowel involvement with brachial plexus injury. The

permanent disability suffered by the appellant was assessed to be 100% vide disability certificate– Ex.PW4/1.

3. The learned Tribunal awarded Rs.3,61,592/- towards the compensation for medical treatment, Rs.20,000/- towards conveyance and special diet, Rs.40,000/- towards attendant charges, Rs.7,53,840/- towards loss of income due to permanent disability, Rs.1,00,000/- towards pain and suffering, loss of amenities of life and marriage prospects and Rs.50,000/- towards loss of marriage prospects. The total compensation awarded is Rs.13,00,432/-.

4. The learned counsel for the appellant has urged the following grounds at the time of hearing of this appeal:-

(i) The deduction of 1/3rd towards personal expenses while computing loss of income due to permanent disability is not in accordance with law.

(ii) Separate compensation be awarded for pain and suffering and loss of amenities of life.

(iii) The compensation for conveyance and special diet be enhanced.

(iv) The compensation for future treatment be awarded.

5. With respect to the loss of income due to permanent disability, the learned Tribunal has taken the income of the deceased to be Rs.5,578/- according to the minimum wages. The learned Tribunal deducted 1/3rd towards personal expenses of the deceased and applied the multiplier of 18 to compute the loss of income to be Rs.7,53,840/-. It is well settled that the deduction

for personal expenses is permissible in death cases on the ground that the deceased would have been spending the said amount on himself. However, the deduction towards personal expenses is not permissible in injury cases. The learned counsel for the appellant refers to and relies upon the judgment of the Hon'ble Supreme Court in the case of **Oriental Insurance Co. Ltd. vs. Ram Prasad Varma, I (2009) ACC 357 SC**. The deduction of 1/3rd by the learned Tribunal towards the personal expenses is, therefore, set aside. The loss of income of the deceased is taken to be Rs.12,04,848/- (Rs.5,578 x 12 x 18).

6. The learned Tribunal has awarded Rs.1,00,000/- towards pain and suffering, loss of amenities of life and marriage prospects. The learned Tribunal has further awarded Rs.50,000/- towards loss of marriage prospects. It is well settled that the compensation for pain and suffering, loss of amenities of life and marriage prospects are separate heads and separate compensation has to be awarded under the said heads. Reference in this regard may be made to the judgment of this Court in the case of **Oriental Insurance Co. Ltd. vs. Vijay Kumar Mittal, MAC.APP.No.228/2006 decided on 11th May, 2007** where this Court has examined the previous judgments and awarded Rs.1,50,000/- towards pain and suffering, Rs.1,50,000 towards loss of amenities of life and Rs.1,00,000/- towards marriage prospects in respect of 100% disability.

7. Following the aforesaid judgment, Rs.1,50,000/- is awarded towards pain and suffering, Rs.1,50,000/- is awarded towards loss

of amenities of life and Rs.1,00,000/- is awarded towards marriage prospects. The appellant is entitled to total compensation of Rs.20,26,440/- (Rs.12,04,848/- towards loss of income, Rs.3,61,592/- towards medical treatment, Rs.20,000/- towards conveyance and special diet, Rs.40,000/- towards attendant charges, Rs.1,50,000/- towards pain and suffering, Rs.1,50,000/- towards loss of amenities of life and Rs.1,00,000/- towards marriage prospects).

8. The appeal is allowed and the award amount is enhanced from Rs.13,00,432/- to Rs.20,26,440/- along with interest @7.5% per annum from the date of filing of the petition till realization.

9. The enhanced award amount along with interest be deposited by respondent No.3 by means of a cheque with UCO Bank, Delhi High Court Branch. The cheque be drawn in the name of UCO Bank A/c Atish Kumar Nischal.

10. Upon such deposit being made, UCO Bank is directed to release a sum of Rs.1,50,000/- to the appellant by transferring the said amount to the Savings Bank Account of the appellant. The remaining amount be kept in fixed deposit for a period of seven years on which monthly interest be paid to him.

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

12. 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.

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

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

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

16. 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 claimant.

17. 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).

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

19. 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 23, 2009

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