

IN THE HIGH COURT OF DELHI AT NEW DELHI**+ MAC.APP.No.114/2009**

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Date of decision: 19th January, 2010

JAGBANDHU BANERJEE Appellant
 Through : Mr. Ashish Sharma and
 Mr. Sunil Dalal, Advs. along
 with appellant.

versus

SANTOSH KUMAR & ORS. Respondents
 Through : Ms. Shantha Devi Raman,
 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.1,64,000/- has been awarded to him . The appellant seeks enhancement of the award amount.

2. The accident dated 19th August, 2003 resulted in grievous injuries to the appellant. The appellant was standing on the red light on his scooter when he was hit by Maruti Car bearing No.DL-1CC-7589 from behind. The appellant fell down from his scooter and suffered fracture of femur bone of his left leg. The appellant was admitted in Safdarjung Hospital and was operated upon for

fixing a plate. The plate fixed by the surgeon inside the leg deflected from the fixed position which did not improve with treatment and finally another surgery was performed in Safdarjung Hospital in April, 2004 for removal of the plate and fixing a rod. The appellant remained hospitalized for the second time from 13th April, 2004 to 22nd April, 2004. On 30th November, 2005, the doctors told the appellant to walk slowly. The appellant's leg has become shorter and his disability has been assessed as 12% vide disability certificate – Ex.P-1.

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

- (i) The compensation for pain and suffering be enhanced.
- (ii) The compensation for loss of amenities of life be enhanced.
- (iii) The compensation for disfiguration be awarded.
- (iv) The compensation for loss of income and earning capacity be enhanced.
- (v) The compensation for conveyance be enhanced.

4. The appellant remained under treatment for about eight months and considering that he underwent two surgeries during this period and remained under immense pain and suffering, the compensation for pain and suffering and loss of amenities of life awarded by the learned Tribunal is on a lower side. The compensation for pain and suffering is enhanced from Rs.30,000/- to Rs.50,000/-. The compensation for loss of amenities of life is enhanced from Rs.5,000/- to Rs.15,000/-. The

appellant has suffered shortening of leg and, therefore, Rs.15,000/- is awarded for disfiguration.

5. The learned Tribunal has awarded Rs.15,000/- for loss of income during the period of treatment by taking the difference between the Income Tax Return before the accident and after the accident. During the financial year 2002-03, the appellant's income was Rs.88,227/- which reduced to Rs.63,181/- in 2004-05. The difference between the income of these years is Rs.25,046/- (Rs.88,227 – Rs.63,181). The learned Tribunal has awarded Rs.15,000/- towards loss of income during the period of treatment which is enhanced to Rs.25,000/-.

6. The learned Tribunal has awarded Rs.68,817/- towards loss of earning capacity due to permanent disability by taking the permanent disability of the appellant in respect of whole body as 6%. There is no evidence on record to the effect that the permanent disability in respect of the whole body was 6% and the learned Tribunal has drawn this presumption without any basis. Considering that the appellant's leg has been shortened, the rod has been inserted and the appellant would not be in a position to drive a two-wheeler and shall also have difficulty in running and climbing, the permanent disability of the appellant is taken to be 12% in respect of the whole body. The loss of earning capacity of the appellant is, therefore, enhanced from Rs.68,817/- to Rs.1,37,634/- (Rs.88,227 x 13 x 12%).

7. The learned Tribunal has awarded Rs.10,000/- towards conveyance and special diet. Considering that there is

shortening of leg and the appellant is unable to drive a two-wheeler due to insertion of a rod, the compensation for conveyance certainly needs enhancement. The learned Tribunal has awarded Rs.10,000/- towards conveyance and special diet out of which compensation for special diet is treated to be Rs.5,000/- and the compensation for conveyance is enhanced from Rs.5,000/- to Rs.25,000/-.

8. The appellant is entitled to total compensation of Rs.3,07,634/- (Rs.35,000/- towards medical expenditure + Rs.50,000/- towards pain and suffering + Rs.15,000/- towards loss of amenities of life + Rs.25,000/- for loss of income + Rs.1,37,634/- for loss of earning capacity due to permanent disability + Rs.25,000/- towards conveyance + Rs.5,000/- towards special diet).

9. The appeal is allowed and the award amount is enhanced from Rs.1,64,000/- to Rs.3,07,634/-. The learned Tribunal has awarded interest @9% per annum which is not disturbed on the original award amount of Rs.1,64,000/-. 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.

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

11. Upon the enhanced award amount being deposited, UCO Bank is directed to keep a sum of Rs.1,50,000/- in fixed deposit in the name of the appellant in the following manner:-

- (i) Fixed deposit for Rs.25,000/- for a period of six months.
- (ii) Fixed deposit for Rs.25,000/- for a period of one year.
- (iii) Fixed deposit for Rs.25,000/- for a period of one and a half years.
- (iv) Fixed deposit for Rs.25,000/- for a period of two years.
- (v) Fixed deposit for Rs.25,000/- for a period of two and a half years.
- (vi) Fixed deposit for Rs.25,000/- for a period of three years.

12. The remaining amount be released to the appellant by transferring the same to his Saving Bank Account.

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

14. 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.

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

16. 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.

17. The original fixed deposit receipt shall be handed over to the appellants on the expiry of the period of the FDR.

18. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipt without the permission of this Court.

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

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

21. 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.

22. Copy of the order be given dasti to counsel for both the parties.

23. 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.

J.R. MIDHA, J

JANUARY 19, 2010

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