

+ MAC.APP.No.225/2004Date of Decision: 11th January, 2010

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PANKAJ JAIN

..... Appellant

Through : Ms. Sangeeta Jain, Adv.

versus

LAL BIR & ORS.

..... Respondents

Through : Ms. Pankaj Bala Verma, Adv.

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.1,94,750/- has been awarded to him. The appellant seeks enhancement of the award amount.

2. The accident dated 8th September, 1989 resulted in grievous injuries to the appellant. The appellant was going on his two-wheeler scooter bearing No.DDP-2290 and was hit by bus bearing No.DEP-2619 from behind. The appellant fell down and was dragged by the bus for about 30-40 yards. The appellant suffered following injuries due to the accident:-

- (i) Paralysis of eye muscle.
- (ii) Crush injuries on right hand.
- (iii) Injuries on the right ear.
- (iv) Fracture of mandible (jaw bone).

3. The appellant was taken to All India Institute of Medical Sciences (AIIMS) where his right hand was operated upon and his index, middle and ring finger of the right hand were amputated and skin grafting was carried out. The appellant underwent two surgeries at AIIMS and two surgeries at Safdarjung Hospital.

4. The appellant suffered 45% permanent disability in relation to the right lower limb due to the traumatic amputation of index, middle and ring finger through the middle phalanx. The appellant also suffered permanent impairment of hearing in right ear.

5. The appellant remained under treatment for about one and a half years. The documents including prescription slip, treatment record and expenditure on treatment were proved as Ex.P-2 to Ex.P-99.

6. The appellant was 24 years old at the time of the accident and had started the business of garment fabrication as proprietorship concern in the name of M/s Paras Enterprises. The provisional registration certificate of the firm of the appellant was proved as Ex.P-100. The appellant was allotted importer code number which was proved as Ex.P-101. The appellant took a loan of Rs.95,000/- from New

Bank of India to purchase the machinery. The documents relating to the loan taken by the appellant were proved as Ex.P-104 to Ex.P-127. The invoice of the machinery purchased by the appellant was proved as Ex.P-96.

7. The learned Tribunal held that the appellant failed to prove the income and, therefore, the notional income of Rs.15,000/- per annum was taken to compute the loss of income at Rs.1,14,750/-. The learned Tribunal has awarded Rs.40,000/- towards pain and suffering, Rs.20,000/- towards conveyance, medicine and special diet and Rs.20,000/- towards loss of earning due to injuries. The total compensation awarded is Rs.1,94,750/-.

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

- (i) The compensation for loss of income due to permanent disability be enhanced.
- (ii) The compensation for pain and suffering be enhanced.
- (iii) The compensation for conveyance, medicine and special diet be enhanced.
- (iv) The compensation be awarded for loss of amenities of life.
- (v) The compensation be awarded for disfiguration.
- (vi) The compensation be awarded for reduction of matrimonial prospects.

9. During the pendency of this appeal, the appellant filed

an application for permission to lead additional evidence which was allowed and the learned Tribunal was directed to record the additional evidence vide order dated 16th November, 2006 in pursuance to which the appellant led additional evidence and proved that the appellant was running a garment factory at the time of the accident and was getting regular orders from M/s Addi Industries Ltd. The appellant used to purchase accessories from the market and the customers used to provide raw material for manufacturing, fabrication and finishing of the readymade garments by issuing challan to the appellant. 14 challans during the period from 10th April, 1989 to 18th July, 1989 were proved as Ex.PW1/130 to Ex.PW1/143. The challan dated 22nd July, 1989 and bill dated 1st May, 1989 raised by the appellant for fabrication, finishing and manufacturing of readymade garments to M/s Addi Industries Ltd. were proved as Ex.PW1/144 to Ex.PW1/145. The appellant purchased threads from the market for fabrication and finishing of the garments from the various suppliers in respect of which the bills were proved as Ex.PW1/146 to Ex.PW1/148. Respondent No.3 summoned the witness from M/s Addi Industries Ltd. as DW-1 who admitted the documents proved by the appellant. The appellant had to close down the factory as he was not in a position to run the same after the accident.

10. The learned counsel for the appellant submits that the appellant had set up a garment fabrication factory. The

projected profit and loss account of the appellant for the first five years has been proved as Ex.P-53 according to which the appellant projected to earn an income of Rs.1,36,000/- in the first year, Rs.1,54,000/- in the second year, Rs.1,80,000/- in the third year, Rs.2,06,000/- in the fourth year and Rs.2,35,000/- in the fifth year. The projected profit and loss account was examined by the bank and the loan was sanctioned by the bank for purchase of the machinery after appreciation of the project report. The learned counsel submits that the earning capacity should be determined by taking the aforesaid facts into consideration. The learned counsel refers to and relies upon the judgment of the Hon'ble Supreme Court in the case of **M.G. DIR, Bangalore Metropolitan TPT Corporation vs. Sarojamma, AIR 2008 SC 3244** whereby the Hon'ble Supreme Court considered the earning capacity of the deceased to award the compensation. The earning capacity of the deceased can be determined by taking into consideration various facts and circumstances. The guidance for drawing such presumption can be taken from Section 114 of the Indian Evidence Act which is reproduced hereunder:-

“Section 114. Court may presume existence of certain facts.- The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case”

11. Considering all the aforesaid relevant facts and circumstances, the earning capacity of the appellant is taken to be Rs.5,000/- per month. The learned Tribunal was clearly in error in taking the notional income of the appellant to be Rs.15,000/- per annum. The concept of notional income has been wrongly invoked by the learned Tribunal in this case.

12. The learned counsel for respondent No.3 submits that 1/3rd of the income of the appellant be deducted towards his personal expenses. The argument of learned counsel for respondent No.3 is rejected as the deduction towards the personal expenses is permissible only in death cases and not in injury cases.

13. The learned counsel for the appellant submits that the future prospects be taken into consideration for computation of compensation. In the judgment of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129**, the Hon'ble Supreme Court has not permitted the future prospects to be taken into consideration while computing the compensation in respect of self-employed persons and, therefore, no future prospects are warranted in this case.

14. The learned Tribunal has applied the multiplier of 17 to compute the loss of income. However, the appropriate multiplier at the age of 24 has been held by the Hon'ble Supreme Court to be 18 in the case of **Sarla Verma** (supra). The appellant is unable to do anything with the right hand. The loss of earning capacity of the appellant is taken to be

50%.

15. Taking the income of the appellant to be Rs.5,000/- per month, applying the multiplier of 18 and taking the loss of earning capacity to be 50%, the loss of income is computed to be Rs.5,40,000/- (Rs.5,000 x 12 x 18 x 50%). The learned Tribunal has awarded loss of income under two heads namely Rs.1,14,750/- towards permanent disability and Rs.20,000/- towards loss of earning capacity. The total compensation awarded under the two heads is Rs.1,34,750/- which is enhanced to Rs.5,40,000/-.

16. The learned Tribunal has awarded Rs.20,000/- to the appellant towards conveyance, medicines and special diet. The amount awarded by the learned Tribunal under these heads appears to be on a lower side. However, since there was no documentary evidence of medical expenditure over and above the amount awarded, no interference is called for.

17. The learned Tribunal has awarded a sum of Rs.40,000/- towards pain and suffering. However, no compensation has been awarded for loss of amenities of life, disfiguration as well as loss of matrimonial prospects.

18. In the case of **Oriental Insurance Co. Ltd. vs. Vijay Kumar Mittal (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.”

19. The learned counsel for respondent No.3 submits that no compensation should be awarded for loss of matrimonial prospects to the appellant as the appellant was in fact married after the accident. It may be noted that the compensation is being awarded for reduction of matrimonial prospects due to disfiguration and the injuries suffered by the appellant. It cannot be said that after permanent disfiguration and permanent disability of more than 45%, the matrimonial prospects were not reduced in any manner. This argument would have been available to learned counsel for respondent No.3 if the appellant would have been married prior to the accident.

20. Considering the 45% permanent disability relating to right lower limb and by adding the permanent disability of impairment of hearing in right ear due to the accident, the permanent disability in respect of whole body is taken to be 50% and following the aforesaid judgment, the non-

pecuniary compensation of Rs.3,00,000/- is awarded to the appellant under 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.50,000/- |
| (iv) | Compensation for loss of matrimonial prospects | - | Rs.50,000/- |

21. The appellant is entitled to total compensation of Rs.8,60,000/- (Rs.5,40,000/- for loss of earning capacity due to permanent disability, Rs.20,000/- for conveyance, medicines and special diet, Rs.1,00,000/- for pain and suffering, Rs.1,00,000/- for loss of amenities of life, Rs.50,000/- for disfiguration and Rs.50,000/- for loss of matrimonial prospects).

22. The appeal is allowed and the award amount is enhanced from Rs.1,94,750/- to Rs.8,60,000/-. The learned Tribunal has awarded interest @ 9% per annum which is not disturbed on the original award amount of Rs.1,94,750/-. However, on the enhanced award amount, the rate of interest shall be @7.5% per annum. The learned Tribunal has awarded interest from the date of interim award. The appellant is entitled to interest from the date of filing of the petition till realization.

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

24. Upon the enhanced award amount being deposited, the UCO Bank is directed to release a sum of Rs.1,00,000/- to the appellant by transferring the same to his Saving Bank Account. The remaining amount be kept in fixed deposit in the name of the appellant as per the details given hereunder:-

- (i) Fixed deposit of 5% of the balance amount for a period of six months.
- (ii) Fixed deposit of 5% of the balance amount for a period of one year.
- (iii) Fixed deposit of 5% of the balance amount for a period of one and a half years.
- (iv) Fixed deposit of 5% of the balance amount for a period of two years.
- (v) Fixed deposit of 5% of the balance amount for a period of two and a half years.
- (vi) Fixed deposit of 5% of the balance amount for a period of three years.
- (vii) Fixed deposit of 5% of the balance amount for a period of three and a half years.
- (viii) Fixed deposit of 5% of the balance amount for a period of four years.

- (ix) Fixed deposit of 5% of the balance amount for a period of four and a half years.
- (x) Fixed deposit of 5% of the balance amount for a period of five years.
- (xi) Fixed deposit of 5% of the balance amount for a period of five and a half years.
- (xii) Fixed deposit of 5% of the balance amount for a period of six years.
- (xiii) Fixed deposit of 5% of the balance amount for a period of six and a half years.
- (xiv) Fixed deposit of 5% of the balance amount for a period of seven years.
- (xv) Fixed deposit of 5% of the balance amount for a period of seven and a half years.
- (xvi) Fixed deposit of 5% of the balance amount for a period of eight years.
- (xvii) Fixed deposit of 5% of the balance amount for a period of eight and a half years.
- (xviii) Fixed deposit of 5% of the balance amount for a period of nine years.
- (xix) Fixed deposit of 5% of the balance amount for a period of nine and a half years.
- (xx) Fixed deposit of 5% of the balance amount for a period of ten years.

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

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

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

28. The original fixed deposit receipts 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.

29. The original fixed deposit receipts shall be handed over to the appellant at the end of the fixed deposits period.

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

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

32. 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.

33. 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.

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

35. 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.

JANUARY 11, 2010
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J.R. MIDHA, J