

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ MAC.APP.No.113/2007

Date of Decision: 20th January, 2010

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AHMED SUHAIL SIDDIQUI Appellant
Through : Mr. Sumit Gupta, Adv.

versus

D.T.C. & ANR. Respondents
Through : Mr. Ataul Haque, Adv.
for R-1.

**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.2,00,000/- has been awarded to the appellant. The appellant seeks enhancement of the award amount.

2. The accident dated 19th January, 1992 resulted in the grievous injuries to the appellant who filed the claim petition before the learned Tribunal. The appellant was driving his car bearing No.DHD 4216 on Captain Gaur Marg, Opposite Okhla DTC Depot. It is a double road with a divider in between and the appellant was on the correct side of the road. It was about 9:45 p.m. The offending DTC bus bearing No.DEP 9958 came from the opposite direction and there

was a head-on collision between the appellant's car and the offending bus. The appellant suffered fractures of three ribs of right side, fractures of two ribs on left side, fracture of left ulna bone, fracture of left hip, fracture of left hand, dislocation of right hip, serious injuries on lungs besides serious head injuries in the accident in question.

3. The learned Tribunal has awarded Rs.1,50,000/- towards the expenses on medicines, Rs.55,000/- towards future expenses, Rs.65,000/- towards loss on account of disability, Rs.20,000/- towards stockings, Rs.30,000/- towards conveyance, Rs.30,000/- towards special diet and Rs.50,000/- towards pain and suffering. The total compensation computed is Rs.4,00,000/- . However, the said amount was reduced by 50% as the learned Tribunal held the appellant to be contributory negligent. The learned Tribunal has awarded a sum of Rs.2,00,000/- to the appellant.

4. Following grounds have been urged by learned counsel for the appellant at the time of hearing of this appeal:-

- (i) The finding of 50% contributory negligence of the appellant be set aside.
- (ii) The compensation for future medical expenses be enhanced from Rs.55,000/- to Rs.10,00,000/-
- (iii) The compensation on account of loss of income due to permanent disability be enhanced.
- (iv) The compensation for pain and suffering be enhanced.

- (v) The compensation be awarded for loss of amenities of life.
- (vi) The compensation for conveyance and special diet be enhanced.
- (vii) The compensation be awarded for engaging the attendant.
- (viii) The compensation be awarded for purchase of stockings.

5. With respect to the finding of contributory negligence of the appellant to the extent of 50%, the learned counsel refers to and relies upon the statement of the appellant who appeared in the witness box as PW-10 and deposed that the accident occurred on Captain Gaur Marg opposite Okhla Bus Depot and the appellant was on correct side of the road whereas the DTC bus had come on the wrong side. The learned counsel submits that the accident occurred at about 9:10pm and it was a foggy night. The road in question is a double road with three lanes on either side with a divider in between. The learned counsel further submits that the appellant had crossed the same road on the other side about half an hour before the accident and the other side of the road was very much operational at that time. The learned counsel submits that PW-10 was not cross-examined by the respondents despite opportunity given. The learned counsel further submits that the driver of the DTC bus appeared in the witness box as R2W1 and deposed that the passengers in

the bus made a note about the manner in which the accident occurred but the said notebook was not produced before the learned Tribunal. R2W1 has deposed that the bus was stationary at the bus stop at the time of the accident and the passengers were getting down and another DTC bus No.GL429 was coming from the opposite direction followed by the appellant's car and that DTC bus stopped and the appellant's car hit the offending bus in its attempt to overtake that stationary DTC bus. The learned counsel submits that the driver and the conductor of the other DTC bus were not examined by DTC to prove the contention raised by R2W1 and, therefore, the said contention has not been proved by R2W1.

6. R2W1 has admitted that the bus had come on the wrong side of the road where the accident occurred. However, the explanation given was that the traffic on the correct side of the road was diverted due to some road accident and the bus was stationary at the time of the accident.

7. The learned Tribunal held the appellant to be contributory negligent for the accident to the extent of 50% on the ground that the traffic on the one half of the road was closed and traffic of both the sides was moving on the other half of the road and the appellant ought to have been careful when the traffic was moving on one side. The learned Tribunal referred to and relied upon the site plan prepared by

the police. The learned Tribunal overlooked the fact that the appellant was on correct side of the road whereas the DTC bus came from the wrong side of the road. Though the opposite side of the road was closed but there was no indication on the road and the appellant was not aware about the closure of the road. The appellant had crossed opposite side of the road about half an hour before the accident when the other side of the road was very much operational at that time. In these facts and circumstances, 50% of the contributory negligence cannot be attributed to the appellant. However, the appellant was negligent to a certain extent and the negligence of the appellant is taken to be 20% and the driver of the DTC bus is held to be contributory negligent to the extent of 80%. The findings of the learned Tribunal in this regard are modified to the above extent.

8. The appellant suffered displacement of hip joint. The appellant became unconscious at the time of the accident and he was removed by the PCR Van to AIIMS where he remained for a day and thereafter he was shifted to Safdarjung Hospital. The appellant remained in ICU on ventilator in Safdarjung Hospital for three weeks and for about one month in the ward. The appellant remained in Safdarjung Hospital from 20th January, 1992 to 4th April, 1992. The appellant thereafter took discharge from Safdarjung Hospital and continued the treatment from Dr. Mandal of Sir Ganga Ram Hospital. After two years of the

said treatment, the appellant was admitted in Sir Ganga Ram Hospital from 19th May, 1995 to 29th May, 1995 where he underwent hip replacement surgery of left hip and was discharged thereafter. In 2001, the appellant developed varicose veins (swelling of veins) and he was admitted in AIIMS for four days from 17th August, 2001 to 20th August, 2001 and surgery was conducted for removal of varicose veins. In March, 2008, the appellant again underwent hip replacement surgery as he was advised that the life of hip replacement is 10 to 15 years.

9. The learned Tribunal has awarded a sum of Rs.1,50,000/- towards medical expenditure and Rs.55,000/- towards future expenditure. The medical expenditure of Rs.1,50,000/- awarded by the learned Tribunal does not call for any interference as the appellant has not furnished any proof of expenditure beyond Rs.1,50,000/-. However, with respect to the future expenditure of Rs.55,000/- awarded by the learned Tribunal, the learned counsel refers to and relies upon the statement of Dr. S.P. Mandal who appeared before the learned Tribunal as PW-9 and deposed that the life of the left artificial hip is 10 to 15 years and the appellant may require the replacement thereafter. PW-9 has further deposed that another replacement surgery may cost Rs.5,00,000/- and the appellant will have to continue to take medicines and treatment for his whole life. There is no cross-examination of PW-9 relating to his statement with

respect to the requirement of future treatment and medical expenditure. As per the certificate of Dr. S.P. Mandal, the appellant has spent approximately Rs.3,50,000/- on hip replacement in March, 2008. The life of artificial limb replaced in March, 2008 is 10 to 15 years and, therefore, the appellant shall require about two more hip replacements during his lifetime. The appellant is, therefore, entitled to cost of three hip replacements including the one undergone in March, 2008. The appellant has already spent Rs.3,50,000/- in hip replacement in March, 2008 and more amount shall be incurred in the future hip replacements. Rs.3,50,000/- is awarded to the appellant towards the hip replacement carried out in March, 2008 and Rs.3,50,000/- is awarded towards two hip replacements that will be carried out in future. Since the said amount would be incurred at a future date after approximately five years or more and this amount shall remain invested in the bank till then, the amount along with interest at that time would be sufficient to meet the cost of two hip replacements in future.

10. The learned Tribunal has awarded Rs.65,000/- to the appellant towards the loss of income due to permanent disability. The appellant was the editor, publisher and owner of the Urdu Weekly "Hamara Kadam" which was duly registered with the Registrar of Newspapers. The appellant appeared in the witness box as PW-1 and claimed his average income to be Rs.25,000/- to Rs.50,000/- weekly.

However, no proof of income was submitted by the appellant to prove the income. The appellant has placed some evidence on record to prove that he was the editor, publisher and owner of the Urdu Weekly “Hamara Kadam” which was stopped after the accident as the appellant was not in a position to run the same.

11. In the facts and circumstances of this case, the income of the appellant is taken to be Rs.5,000/- per month instead of Rs.3,000/- taken by the learned Tribunal. The learned Tribunal has taken the loss of earning capacity of the appellant to be 10%. The appellant has suffered 20% disability as per the disability certificate – Ex.PW10/2 in respect of left lower limb. As per the disability certificate – Ex.PW9/21 issued by Dr. S.C. Mandal, it was opined that the permanent disability of the appellant in respect of the left lower limb is about 70%.

12. The appellant is a journalist and considering the nature of his occupation and the left lower limb having been crippled, the loss of earning capacity is taken to be 30% instead of 10% as assessed by the learned Tribunal. The appellant was aged 28 years at the time of the accident and, therefore, the appropriate multiplier at the age of 28 years is 17. Taking the income of the appellant to be Rs.5,000/- per month, applying the multiplier of 17 and taking the loss of earning capacity to be 30%, the loss of income is assessed to be Rs.3,06,000/- (Rs.5,000 x 12 x 17 x 30%).

13. The learned Tribunal has not awarded any compensation to the appellant for employing an attendant for a period of two years. The appellant produced the attendant in the witness box as PW-12 who deposed that he worked with the appellant for two years at a salary of Rs.2,000/- per month besides boarding and lodging. Rs.48,000/- ($\text{Rs.2,000} \times 12 \times 2$) is awarded to the appellant towards the cost of employing the attendant.

14. The learned Tribunal has awarded a sum of Rs.20,000/- towards cost of stockings. The learned counsel for the appellant submits that Dr. Anurag Srivastava appeared as PW-11 and deposed that the appellant has suffered varicose veins due to which he was advised to wear elastic stockings in both the legs for rest of his life to prevent further damage. PW-11 deposed that, each stockings cost Rs.2,000/- to Rs.2,400/- and lasts for four to six months. The learned counsel for the appellant submits that the appellant is spending Rs.6,000/- per annum towards cost of stockings which has been proved by Ex.PW6/1 and Ex.PW6/2 according to which the cost of stockings was Rs.4,120/-. Considering the cost of stockings, the amount awarded by the learned Tribunal is inadequate and warrants enhancement. The cost of the stockings is enhanced from Rs.20,000/- to Rs.60,000/- considering that if the said amount is kept in fixed deposit, it would be sufficient to meet the recurring cost of stockings.

15. The learned Tribunal has awarded Rs.30,000/- towards conveyance to the appellant. The learned counsel for the appellant submits that the appellant remained under treatment for two years and confined to bed. The conveyance during the said period was proved by the statement of taxi owner, PW-3 who deposed that he charged Rs.75,000/- from the appellant towards conveyance from 1992 to 1995 and thereafter he was charging Rs.2,000/- per month. The amount deposed by PW-3 appears to be exaggerated. However, the amount awarded by the learned Tribunal is on a lower side and warrants enhancement. The compensation towards conveyance is assessed to be Rs.1,000/- per month. Applying the multiplier of 17, the compensation towards conveyance is assessed to be Rs.2,04,000/- (Rs.1,000 x 12 x 17).

16. The learned Tribunal has awarded a sum of Rs.30,000/- towards special diet to the appellant which does not warrant any interference.

17. The learned Tribunal has awarded a sum of Rs.50,000/- to the appellant towards pain and suffering. However, no compensation has been awarded to the appellant towards loss of amenities of life, disfiguration and loss of matrimonial prospects. Considering the nature of injuries suffered by the appellant and the permanent disfigurement, Rs.50,000/- is awarded for loss of amenities of life, Rs.50,000/- is awarded for disfiguration and Rs.50,000/- is awarded for loss of

reduction of matrimonial prospects. The total compensation is computed to be Rs.16,98,000/- (Rs.3,50,000 + Rs.3,50,000 + Rs.3,06,000 + Rs.60,000 + Rs.48,000 + Rs.2,04,000 + Rs.50,000 + Rs.50,000 + Rs.50,000 + Rs.50,000 + Rs.1,50,000 + Rs.30,000). 20% is deducted from the said amount towards contributory negligence of the claimant and the claimant is entitled to net compensation of Rs.13,58,400/- (Rs.16,98,000 – 20%).

18. The appeal is allowed and the award amount is enhanced from Rs.2,00,000/- to Rs.13,58,400/- along with interest @ 7.5% per annum from the date of filing of the petition till realization. However, there shall be no interest on a sum of Rs.3,50,000/- (Rs.3,50,000/- awarded for future treatment in para 9).

19. The enhanced award amount along with interest be deposited by respondent No.1 with State Bank of India, Tis Hazari Branch A/c Ahmed Sohail Siddiqui by means of a cheque through Mr. H.S. Rawat, Relationship Manager, Tis Hazari Branch, Tis Hazari (Mb: 09717044322) within 60 days.

20. Upon the enhanced award amount being deposited, the State Bank of India is directed to release 10% of the same to the appellant by transferring the said amount to his Saving Bank Account.

21. The remaining amount be kept in fixed deposit in the name of the appellant in the following manner:-

- (i) Fixed deposit in respect of 10% of the award amount for a period of six months.
- (ii) Fixed deposit in respect of 10% of the award amount for a period of one year.
- (iii) Fixed deposit in respect of 10% of the award amount for a period of one and a half years.
- (iv) Fixed deposit in respect of 10% of the award amount for a period of two years.
- (v) Fixed deposit in respect of 10% of the award amount for a period of two and a half years.
- (vi) Fixed deposit in respect of 10% of the award amount for a period of three years.
- (vii) Fixed deposit in respect of 10% of the award amount for a period of three and a half years.
- (viii) Fixed deposit in respect of 10% of the award amount for a period of four years.
- (ix) Fixed deposit in respect of 10% of the award amount for a period of four and a half years.

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

23. 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.

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

25. 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.

26. The original fixed deposit receipts shall be handed over to the appellants on the expiry of the period of the FDRs.

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

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

29. 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.

30. 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.

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

32. 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 20, 2010

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