

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

+ MAC.APP.No.61/2007

Date of Decision: 22nd April, 2010

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MOHD.FEROZ Appellant
Through : Mr. S. Shahi, Adv.

versus

ROSHAN LAL & ORS. Respondents
Through : Mr. Pradeep Gaur and
Mr. Amit Kumar Pandey, Advs. 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.5,54,100/- has been awarded to him. The appellant seeks enhancement of the award amount.

2. The accident dated 6th August, 2004 resulted in grievous injuries to the appellant. The appellant was hit by truck bearing No.HR-45-2931 at village Bhorgarh near DDA Park. Both legs of the appellant were crushed under the wheel of the truck. The appellant suffered multiple fractures on both legs. The appellant remained hospitalized from 6th August, 2004 to 23rd October, 2004. As per the disability

certificate Ex.P-2, the appellant suffered permanent disability of 70% in relation to both the legs. As per the discharge slip Ex.P-8, the appellant was diagnosed for P.T.R.A, fracture shaft left femur, commuted right patella, extreme Raw area of both legs and Exposed Tibia.

3. The learned Tribunal has awarded Rs.35,000/- towards pain and suffering, Rs.13,500/- towards reimbursement of medical expenses, Rs.10,000/- towards special diet, Rs.10,000/- towards conveyance, Rs.18,600/- towards loss of income, Rs.4,17,000/- towards loss of future income and Rs.50,000/- towards loss of enjoyment and amenities. The total compensation awarded is Rs.5,54,100/-.

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

- (i) Compensation for loss of income during treatment be enhanced.
- (ii) Compensation for loss of earning capacity due to permanent disability be enhanced.
- (iii) Compensation for conveyance be enhanced.
- (iv) Compensation for pain and suffering and loss of amenities of life be enhanced.
- (v) Compensation be awarded for disfiguration and reduction of loss of matrimonial prospects.
- (vi) The compensation be awarded for attendant charges.

5. The appellant was aged 18 years at the time of the accident. The Claims Tribunal took the minimum wages of the appellant as Rs.2,170/- per month and applied the multiplier of 16 to compute the loss of earning capacity as Rs.4,17,000/-.

6. The appropriate multiplier at the age of 18 according to the judgment of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129** is 18 and, therefore, the multiplier is enhanced from 16 to 18.

7. It is well settled by catena of judgments of this Court in the cases of **Kanwar Devi vs. Bansal Roadways, 2008 ACJ 2182, 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 this Court should take judicial notice of increase in minimum wages to meet the increase in price index and inflation rate. This Court has taken the view that the minimum wages get doubled over the period of 10 years and increase in minimum wages should be taken as average of minimum wages and its double. Following the aforesaid judgments, the income of the deceased for computation of compensation is taken as Rs.3,255/- $[(Rs.2170 + Rs.4340)/2]$ being the average of minimum wages and its double.

8. Taking the income of the appellant to be Rs.3,255/-, applying the multiplier of 18 and taking 70% as loss of

earning capacity, the total loss of earning capacity of the appellant is computed to be Rs.4,92,156/- (Rs.3,255 x 12 x 18 x 70%)

9. The appellant remained hospitalized from 6th August, 2004 to 23rd October, 2004 and the treatment continued even thereafter. The Claims Tribunal has awarded loss of income during the period of treatment for a period of six months as Rs.18,500/-. The treatment continued for more than one year. The loss of income during the treatment period is, therefore, computed for a period of one year. The compensation of Rs.26,040/- (Rs.2,170 x 12) is awarded towards loss of income during the period of treatment.

10. The appellant had employed an attendant named Anwar Ali from 8th August, 2004 to 23rd October, 2004. The appellant paid Rs.8,000/- during the aforesaid period to Anwar Ali for looking after the appellant. The Claims Tribunal has noted the evidence of PW-6 in paragraph 9 of the award. However, the Claims Tribunal erred in not awarding any compensation to the appellant on that account. Considering the evidence on record, Rs.8,000/- is awarded to the appellant towards the attendant charges.

11. The Claims Tribunal has awarded a sum of Rs.10,000/- to the appellant towards conveyance. The both legs of the appellant have been crushed under the truck and he has suffered 70% disability and is unable to walk without any support. The appellant is present in Court and his condition

has been perused. The appellant is not in a position to travel by public transport. The amount of Rs.1,000/- awarded by the Claims Tribunal is grossly inadequate and without any basis. The appellant is presently unemployed. The compensation for loss of income has been awarded presuming that his earning capacity is 30%. Assuming that the appellant is able to find some employment, he shall have to spend amount on travelling and even if the appellant is not able to find any employment, he still needs to travel sometime. This Court is of the view that, if the appellant finds some employment, he would be spending Rs.1,500/- per month on conveyance and, if he remains unemployed, he may be spending Rs.300/- per month on conveyance for travelling on account of social obligations and other bare necessities of life, such as treatment, etc. In the facts and circumstances of this case, the average of Rs.500/- per month is fair compensation towards the conveyance charges. Applying the multiplier of 18, the compensation on account of conveyance is computed as Rs.1,08,000/-. This amount is further discounted by Rs.8,000/- considering that the appellant would keep the said amount in fixed deposit and the interest thereon should be sufficient for the appellant to meet the expenses of the conveyance and, therefore, Rs.1,00,000/- is awarded for conveyance.

12. The Claims Tribunal has awarded Rs.35,000/- towards pain and suffering and Rs.50,000/- towards loss of amenities

of life. 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 cases 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 aforenoted 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.”

13. Following the aforesaid judgment, the compensation for pain and suffering is enhanced from Rs.35,000/- to Rs.1,00,000/-. The compensation of enjoyment of life and amenities of life is enhanced from Rs.50,000/- to Rs.1,00,000/-. Rs.50,000/- has awarded towards disfiguration and Rs.50,000/- towards loss of matrimonial prospects.

14. The appellant is entitled to following compensation:-

- (i) Compensation for loss of : Rs.4,92,156/-
earning capacity
- (ii) Compensation for loss of : Rs.26,040/-
income during treatment
period.
- (iii) Compensation for : Rs.1,00,000/-
conveyance
- (iv) Compensation for : Rs.8,000/-
attendant charges.

(v)	Compensation for pain : Rs.1,00,000/-
	and suffering
(vi)	Compensation for loss of : Rs.1,00,000/-
	amenities of life
(vii)	Compensation for : Rs.50,000/-
	disfiguration
(viii)	Compensation for loss of : Rs.50,000/-
	matrimonial prospects
(ix)	Compensation for special : Rs.10,000/-
	diet
(x)	Compensation for : Rs.13,500/-
	medical expenses
Total : Rs.9,49,696/-	

15. The appeal is allowed with costs. The award amount is enhanced from Rs.5,54,100/- to Rs.9,49,696/- along with interest @ 7.5% per annum from the date of filing of the petition till notice of deposit under Order XXI Rule 1 of the Code of Civil Procedure. The cost of the appeal is assessed at Rs.25,000/- based on the memo of fees filed by the counsel for the appellant at the time of hearing of this appeal.

16. The enhanced award amount along with interest be deposited by respondent No.3 with UCO Bank A/c Mohd. Feroz, Delhi High Court Branch through Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) within 40 days. The cost of Rs.25,000/- of this appeal be deposited by respondent No.3 by means of separate cheque in the name of S. Shahi, Advocate along with the deposit of the enhanced award amount. In view of the judgment of this Court in Sat Prakash vs. Jagdish, FAO.No.365/1999 decided on 26th March, 2010, the legal fee of the counsel for respondent No.3 be also deposited with UCO Bank by means of a separate cheque in

the name of Pradeep Gaur, Advocate.

17. Upon the aforesaid amount being deposited, the UCO Bank is directed to release 10% of the same 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 in the following manner:-

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

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

19. 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.

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

21. The Bank shall issue Fixed Deposit Pass Book instead of the FDRs to the appellant and the maturity amount of the FDRs be automatically credited to the Saving Bank Account of the beneficiary at the end of the FDRs.

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

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

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

25. 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.

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

27. 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

APRIL 22, 2010
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