

+ MAC.APP.No.180/2009Date of Decision: 8th March, 2010

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LUXMI

..... Appellant

Through Mr. O.P. Mannie, Advocate.

versus

MOHINDER PRASAD & ORS.

..... Respondents

Through Ms. Ambika Ray, 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.3,56,427/- has been awarded to the appellant. The appellant seeks enhancement of the award amount.

2. The accident dated 25th May, 2007 resulted in grievous injuries to the appellant. The appellant was alighting from bus bearing No.DL-1P/B-4865 at the bus stop when the driver moved the bus due to which the appellant fell down. The appellant suffered amputation of all five fingers of left lower limb, loss of heel pad, crush injury and degloving injury over

left foot, abrasions over right elbow and right knee, whole skin of the foot below ankle joint (Dorsal + Plantar) degloved and blunt injuries all over body. The disability of the appellant has been assessed to be 70% as per disability certificate - Ex.PW4/A.

3. The appellant was working as a cook drawing salary of Rs.4,000/- per month. In the absence of sufficient proof of income, the learned Tribunal took the minimum wages of Rs.3760/-, added 50% towards the inflation and rise in price index, deducted 1/3rd towards her personal expenses and took the loss of earning capacity as 40% to compute the compensation for loss of earning capacity as Rs.2,88,768/-. Rs.7659/- has been awarded towards medical treatment, Rs.10,000/- towards conveyance and special diet, Rs.50,000/- towards pain and suffering and loss of amenities of life. Total compensation awarded is Rs.3,56,427/-.

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

- (i) The multiplier be enhanced from 16 to 18.
- (ii) The deduction towards personal expenses be set aside.
- (iii) The compensation for pain and suffering and loss of amenities of life be enhanced.
- (iv) The compensation be awarded for disfiguration.
- (v) The compensation for conveyance be enhanced.

5. The appellant was aged 19 years at the time of the accident and the appropriate multiplier is 18 whereas the learned Tribunal has applied the multiplier of 16. The multiplier is enhanced from 16 to 18.

6. The learned Tribunal has deducted 1/3rd towards personal expenses of the appellant. It is well settled that personal expenses are not deductible in the injury cases. The deduction of 1/3rd towards the personal expenses of the deceased is set aside. Applying the multiplier of 18, the loss of earning capacity is computed to be Rs.4,87,296/- (Rs.5640 x 12 x 18 x 40%)

7. The learned Tribunal has awarded Rs.50,000/- towards pain and sufferings and loss of amenities of life, which is insufficient, considering 70% permanent disability suffered by the appellant. The learned Tribunal has also not awarded any compensation for disfigurement. The law with respect to the non-pecuniary compensation is well settled by the judgment of this Court in the case of **Oriental Insurance Co. Ltd. vs. Vijay Kumar Mittal (2008) ACJ 1300**, where 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.”

8. Following the aforesaid judgment, the compensation for pain and suffering is enhanced from Rs.50,000/- to Rs.1,00,000/-, Rs.50,000/- is awarded for loss of amenities of life and Rs.50,000/- towards disfiguration.

9. The learned Tribunal has awarded Rs.10,000/- towards conveyance and special diet. All the five fingers of the left lower limb have been amputated and heel pad has been lost, due to which the appellant is unable to walk without a support and also unable to travel by public transport, meaning thereby that the appellant has to incur regular expenditure on conveyance. The learned Tribunal has not taken this aspect into consideration and has not awarded any compensation on this account. Since the appellant is a working lady, even on a conservative estimate she would be spending Rs.1,000/- per month on her conveyance. Rs.75,000/- is awarded to the appellant towards the conveyance considering that the amount awarded shall be kept in fixed deposit and the interest thereon would be sufficient for her to meet the expenditure on conveyance.

10. The appellant is entitled to total compensation of Rs.7,79,955/- as per the break-up given hereunder:-

(i)	Compensation for medical treatment	:	Rs.7,659/-
(ii)	Compensation towards special diet.	:	Rs.10,000/-
(iii)	Compensation towards conveyance.	:	Rs.75,000/-
(iv)	Compensation towards loss of earning capacity	:	Rs.4,87,296/-
(v)	Compensation towards pain and suffering	:	Rs.1,00,000/-
(vi)	Compensation towards loss of amenities of life	:	Rs.50,000/-
(vii)	Compensation towards disfiguration	:	Rs.50,000/-
Total			: Rs.7,79,955/-

11. The appeal is allowed and the award amount is enhanced from Rs.3,56,427/- to Rs.7,79,955/- along with interest @7.5% per annum from the date of filing of the petition till the notice of deposit under Order 21 Rule 1 of the Code of Civil Procedure.

12. The enhanced award amount along with interest be deposited by respondent No.3 with UCO Bank, Delhi High Court Branch A/c Luxmi by means of a cheque through Mr.M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) within 45 days.

13. Upon the enhanced award amount being deposited, UCO Bank is directed to release 10% of the amount in the name of appellant by transferring the same to her Savings Bank Account. The remaining amount be kept in the fixed deposits in the name of appellant in the following manner:

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

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

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

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

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

18. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts 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 appellant, the Bank shall transfer the Savings Account to any other branch according to the convenience of appellant.

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 under the signatures of the Court Master.

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 under the signature of Court Master.

24. Copy of this order be given 'Dasti' to learned counsel for the parties under the signature of Court Master.

MARCH 08, 2010/_{HL}

J.R. MIDHA, J