

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

+ MAC.APP.No.236/2008

Date of Decision : 28th May, 2010

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RAM KISHAN

..... Appellant
Through : Mr. Ashok Popli,
Mr. Navneet Goyal,
Mr. Varun Kumar, Advs.

versus

JOGINDER SINGH & ORS

..... Respondents
Through : Mr. S.L. Gupta and
Mr. Ram Ashray, 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.4,50,000/- has been awarded to him. The appellant seeks enhancement of the award amount.
2. The accident dated 17th May, 2006 resulted in amputation of both legs below knee of the appellant. The appellant was driving Tata Tempo bearing No.DL-1L-B-5350 while going from Delhi to Khurja. When the appellant reached near Shanti Van crossing on Ring Road at about

11:30pm, a truck bearing No.HR-38-A-5895 going ahead of the appellant's tempo applied sudden brakes in the middle of the road without giving any signal due to which the tempo rammed into the truck resulting in grievous injuries and amputation of both legs of the appellant.

3. The appellant was aged 27 years at the time of the accident and was working as a driver earning Rs.3,500/- per month besides Rs.50/- for daily expenses. The Claims Tribunal awarded Rs.25,000/- towards medical treatment, Rs.12,500/- towards conveyance charges, Rs.7,500/- towards special diet, Rs.7,55,000/- towards loss of income, Rs.75,000/- towards pain and agony and Rs.25,000/- towards loss of amenities. The total compensation assessed was Rs.9,00,000/- out of which 50% was deducted towards the contributory negligence of the appellant and the net compensation awarded to the appellant is Rs.4,50,000/-.

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

- (i) The finding of the contributory negligence of the deceased be set aside.
- (ii) The compensation of Rs.75,000/- towards pain and agony be enhanced.
- (iii) The compensation of Rs.25,000/- towards loss of amenities of life be enhanced.
- (iv) The compensation be awarded for disfiguration.

5. Mr. S.L. Gupta, learned counsel for respondent No.3 has vehemently opposed the grounds of the appellant and he submits that the fair compensation has been awarded to the appellant.

6. With respect to the contributory negligence of the appellant, the Claims Tribunal held the driver of the truck to be negligent. However, the Claims Tribunal held the appellant to be contributory negligent to the extent of 50% on the ground that the appellant admitted driving at the speed of 80 kms/hr. The learned counsel for the appellant submits that the suggestion was given to the appellant that he was driving at a speed of 80 kms/hr to which he denied but the same was not recorded properly and the Claims Tribunal observed that the appellant has admitted driving at a speed of 80 kms/hr. The Claims Tribunal further observed that the appellant should have maintained sufficient distance between the two vehicles. The driver of the truck having been held to be negligent and responsible for the accident, this Court is of the view that in the facts and circumstances of this case, the negligence of the appellant was 25% instead of 50% taken by the Claims Tribunal. The finding of the Claims Tribunal in this regard is, therefore, modified and the appellant is held to be contributory negligent to the extent of 25% and the negligence of the driver of the truck is held to be 75%.

7. With respect to the compensation for pain and agony and loss of amenities of life, the Claims Tribunal has awarded Rs.75,000/- and Rs.25,000/- respectively. The learned counsel for the appellant refers to and relies upon the judgment in the case of **Oriental Insurance Co. Ltd. vs. Vijay Kumar Mittal (2008) ACJ 1300** in which 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 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. The judgment of this Court in **Vijay Kumar Mittal** (supra) relates to 50% disability whereas in the present case, the appellant has suffered 100% disability and, therefore, this case warrants enhancement of compensation.

9. In the facts and circumstances of this case, the compensation for pain and agony and loss of amenities of life is enhanced and Rs.2,00,000/- is awarded to the appellant

towards pain and suffering, Rs.1,00,000/- towards loss of amenities of life and Rs.50,000/- is awarded towards disfiguration. The appellant is entitled to total compensation of Rs.11,50,000/- as per break-up given hereunder:-

(i)	Medical treatment	: Rs.25,000/-
(ii)	Conveyance charges	: Rs.12,500/-
(iii)	Special diet	: Rs.7,500/-
(iv)	Loss of income	: Rs.7,55,000/-
(v)	Pain and suffering	: Rs.2,00,000/-
(vi)	Loss of amenities of life	: Rs.1,00,000/-
(vii)	Compensation for disfiguration	: Rs.50,000/-
Total		: <u>Rs.11,50,000/-</u>

10. Since the appellant has been held to be contributory negligent to the extent of 25%, the aforesaid amount of Rs.11,50,000/- is reduced by 25% and the appellant is held to be entitled to Rs.8,62,500/- [Rs.11,50,000 – (Rs.11,50,000 x 25%)].

11. The appeal is allowed and the award amount is enhanced from Rs.4,50,000/- to Rs.8,62,500/- along with interest thereon @7.5% per annum from the date of filing of the claim petition till the date of notice of deposit under Order 21 Rule 1 of the Code of Civil Procedure.

12. The enhanced award amount along with up to date interest be deposited by respondent No.3 with UCO Bank A/c Ram Kishan through Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) within 30 days.

13. Upon the aforesaid deposit being made, UCO Bank is directed to release 10% of the said amount to the appellant by transferring the same to his Saving Bank Account. The remaining amount be kept in fixed deposits 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.

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

15. 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.

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

17. 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 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 the appellant, the Bank shall transfer the Savings Account to any other branch of UCO Bank according to the convenience of the 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 (Mobile No. 09310356400).

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

MAY 28, 2010
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J.R. MIDHA, J