

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

+ MAC.APP.No.330/2005

Reserved on : 29th October, 2010

Date of Decision : 22nd November, 2010

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SUNNY KUMAR

..... Appellant

Through : Mr. Pramod Kharwar, Adv.

versus

VIRENDER @ MOHAN & ORS.

..... Respondents

Through : Mr. Ram Ashray, Adv.

CORAM :-

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

1. The appellant has challenged the award of the learned Tribunal whereby compensation of ₹53,650/- has been awarded to him. The appellant seeks enhancement of the award amount.

2. The accident dated 29th May, 1998 resulted in grievous injuries to the appellant. The appellant was driving two-wheeler scooter bearing No.DL-3S-H-8503 while going to Perhlad Pur. When the appellant reached Bawana Narela Road near Water Supply Office, he was hit by Maruti car coming from opposite direction at a very fast speed as a result of which, the appellant fell down and suffered injuries. The appellant suffered fracture of both legs and was admitted to Tirath Ram

Shah Hospital for about 15 days where he was operated upon and a rod was inserted in both the legs of the appellant. The appellant took follow-up treatment from the hospital for about one and a half years. The appellant suffered disability of 40% as per certificate dated 21st December, 1959 (Ex.P-126). However, the Claims Tribunal disregarded the certificate on the ground that the certificate does not specify whether the disability of the appellant was permanent/temporary. The Claims Tribunal held that the appellant was entitled to ₹69,213/- towards medical expenditure, ₹2,000/- towards conveyance, ₹1,000/- towards special diet and ₹15,000/- towards loss of income. The Claims Tribunal further awarded ₹20,000/- towards pain and suffering. The total compensation computed is ₹1,07,300/-. The Claims Tribunal held the appellant to be 50% contributory negligent on the ground that the appellant did not produce the driving licence held by him at the time of the accident.

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

- (i) The finding of contributory negligence of the appellant be set aside.
- (ii) The compensation be awarded for loss of amenities of life.
- (iii) The compensation for pain and suffering be enhanced.
- (iv) The compensation for disfiguration be awarded.

- (v) The compensation for loss of earning capacity be awarded.
- (vi) The compensation for special diet be enhanced.
- (vii) The compensation for conveyance be enhanced.
- (viii) The compensation for loss of earning capacity be computed by taking the minimum wages for a graduate into consideration.

4. With respect to the driving licence, the learned counsel for the appellant has produced the original driving licence and has filed the photocopy of the same along with the affidavit certifying that the appellant was holding a valid driving licence at the time of the accident. It is submitted that the appellant could not produce his licence before the Claims Tribunal as he was undergoing treatment at that time. The original driving licence has been perused and the finding of the contributory negligence passed by the Claims Tribunal on the sole ground that the appellant did not have a valid driving licence at the time of the accident is set aside.

5. The Claims Tribunal has not awarded any compensation to the appellant towards loss of earning capacity on the ground that the disability of the appellant has not been certified to be permanent. The notice was issued by this Court to Medical Superintendant, LNJP Hospital to certify the nature of disability of the appellant in pursuance to which the Medical Superintendent of LNJP Hospital has, vide letter dated 13th October, 2010, certified the disability of the appellant to be

permanent. The appellant is, therefore, entitled to compensation for loss of earning capacity. The appellant was working as an Electrician at the time of the accident. It is claimed that the appellant was earning ₹4,000/- per month. However, in the absence of any documentary proof of income, the income of the appellant is taken to be according to the minimum wages of ₹2,361/- at the time of the accident. 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 the Court should take judicial notice of increase in minimum wages to meet the increase in price index and inflation rate. The Court has taken the view that the minimum wages get doubled over the period of 10 years and increase in minimum wages is not akin to future prospects. Following the aforesaid judgments, the income of the deceased for computation of compensation is taken to be ₹3,541.50/- $[(₹2361 + 4722)/2]$. The appellant was aged 27 years at the time of the accident and by applying the multiplier of 17 and taking 40% of the same, the loss of earning capacity is taken to be ₹2,88,986.40 $[40\% \text{ of } (₹3,541.50 \times 12 \times 17)]$.

6. The Claims Tribunal has awarded ₹20,000/- towards pain and suffering which is on a lower side. No compensation has been awarded towards loss of amenities of life and

disfiguration. The learned counsel for the appellant refers to and relies upon the judgment of this Court in the case of **Oriental Insurance Co. Ltd. vs. Vijay Kumar Mittal (2008) ACJ 1300** where the principles relating to the award of compensation towards pain and suffering, loss of amenities of life and disfiguration have been laid down by this Court. In the aforesaid judgment, 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 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.”

7. The compensation for pain and suffering is enhanced from ₹20,000/- to ₹60,000/-. ₹50,000/- is awarded towards loss of amenities of life and ₹25,000/- is awarded towards disfiguration.

8. The Claims Tribunal has awarded ₹2,000/- towards conveyance and ₹1,000/- towards special diet. Considering that the appellant has suffered 40% permanent disability in respect of both legs and remained under treatment for more than a year, the compensation towards conveyance is enhanced from

₹2,000/- to ₹10,000/- and compensation towards special diet is enhanced from ₹1,000/- to ₹10,000/-.

9. The appellant is entitled to total compensation of ₹5,28,199.40 as per break-up given hereunder:-

Compensation towards loss of earning capacity	₹2,88,986.40
Compensation towards loss of income	₹15,000/-
Compensation towards medical expenses	₹69,213/-
Compensation for pain and suffering	₹60,000/-
Compensation towards loss of amenities of life	₹50,000/-
Compensation towards disfiguration	₹25,000/-
Compensation towards special diet	₹10,000/-
Compensation towards conveyance	₹10,000/-
Total	₹5,28,199.40

10. The appeal is allowed and the award amount is enhanced from ₹53,650/- to ₹5,28,199.40 along with interest @7.5% per annum for the date of filing of the petition till notice of deposit under Order XXI Rule 1 of the Code of Civil Procedure.

11. The enhanced award amount along with interest be deposited by respondent No.3 with UCO Bank A/c Sunny, Delhi High Court Branch through Mr. Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400).

12. 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 the Saving Bank Account of the appellant. 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.

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

14. 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.

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

16. 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.

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

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

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

20. 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).

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

22. 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) under the signature of Court Master.

November 22, 2010

J.R. MIDHA, J