

+ MAC.APP.No.336/2009Date of Decision: 10th March, 2010

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BINAY KUMAR

..... Appellant

Through : Mr. Chandra Prakash, Adv.
along with the appellant.

versus

RIYAZUDDIN ANSARI & ORS.

..... Respondents

Through : Mr. Neeraj Sharma, 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.35,200/- has been awarded to him. The appellant seeks enhancement of the award amount.

2. The accident dated 25th November, 2004 resulted in grievous injuries to the appellant. The appellant was standing at Shastri Park red light when he was hit by blue-line bus bearing No.DL-1PB-5295. The bus hit the appellant and dragged him for about 10 to 15 ft. The appellant suffered fracture in his right leg and multiple ruptures in the

left leg. The appellant was initially taken to GTB Hospital from where he was shifted to Sant Parmanand Hospital. The appellant remained under treatment for three months. The appellant suffered permanent disability of 8% in respect of left lower limb due to post traumatic stiffness left ankle with scarring left leg as per disability certificate - Ex.PX-1. The appellant is a practicing lawyer. The appellant joined the practice in 2003. At the time of the accident, the appellant was working as a junior lawyer with M/s Amar Associates drawing Rs.8,000/- per month as retainership fee which was proved by the certificate – Ex.PW1/27 . The appellant appeared in the witness box and deposed that he was also earning Rs.2,000/- from his private practice and his total income at the time of the accident was Rs.10,000/- per month.

3. The learned Tribunal disregarded the evidence of income of the appellant and took minimum wages of Rs.3,654.90 per month and awarded Rs.10,965/- towards loss of income for three months. The learned Tribunal awarded Rs.1,400/- towards conveyance, Rs.500/- towards special diet and Rs.10,000/- towards pain and suffering. The total compensation awarded is Rs.35,200/-.

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

- (i) The compensation for loss of earning capacity due to permanent disability be awarded.

- (ii) The compensation for loss of income during the period of treatment of enhanced.
- (iii) The compensation for conveyance and special diet be enhanced.
- (iv) The compensation be awarded for loss of amenities of life and disfiguration.

5. The appellant was earning Rs.10,000/- per month at the time of the accident out of which the appellant was receiving Rs.8,000/- per month from M/s Amar Associates which was proved vide Ex.PW1/27 and he was earning Rs.2,000/- from his own practice. However, the Claims Tribunal disregarded the certificate – Ex.PW1/27 on the ground that the proprietor of M/s Amar Associates did not appear in the witness box along with the salary records and PW-2 had joined the firm after the relevant period. The reasoning given by the learned Tribunal does not inspire confidence. This is certainly not a case of invoking the minimum wages for a daily wager in respect of a practicing lawyer. If the Claims Tribunal had any doubt about Ex.-PW1/27, the Claims Tribunal could have conducted further inquiry to ascertain the truth or in the alternative, the compensation should have been computed on the basis of earning capacity of a practicing lawyer but to invoke the minimum wages of a daily wager for a practicing lawyer is not justified. In the facts and circumstances of this case, the income of the appellant at the time of the accident is taken to be Rs.8,000/- per month

and Rs.24,000/- (Rs.8,000 x 3) is awarded as compensation for three months during which the appellant could not attend to his work.

6. The Claims Tribunal has not awarded any compensation for loss of earning capacity due to permanent disability. The appellant has suffered permanent disability of 8% in respect of left lower limb. The Claims Tribunal has disregarded the disability certificate – Ex.PX-1 on the ground that it was issued after four years of the accident. The disability certificate has been issued by the Medical Board constituted by the Medical Superintendent of Safdarjung Hospital. There is no reason to disregard the said disability certificate. Again if the Claims Tribunal had any doubt, it could have conducted an inquiry to ascertain why there was delay in issuing the disability certificate. The finding of the Claims Tribunal in this regard is set aside. The disability certificate – Ex.PX-1 of the appellant is accepted. The disability of 8% in respect of left lower limb is taken to be 5% in respect of whole body. The loss of earning capacity is also taken to be 5%. The loss of earning capacity due to the functional disability of 5% is computed to be Rs.86,400/- [(Rs.8,000 x 12 x 18) x 5%].

7. The Claims Tribunal has awarded Rs.1,400/- towards conveyance and Rs.500/- towards special diet which are on a lower side considering the injuries suffered by the appellant and the period of treatment. The compensation for conveyance is enhanced from Rs.1,400/- to Rs.5,000/- and

the compensation for special diet is enhanced from Rs.500/- to Rs.2,500/-.

8. The compensation of Rs.10,000/- for pain and agony is upheld. No compensation has been awarded for loss of amenities of life and disfiguration. Rs.10,000/- is awarded for loss of amenities of life and Rs.5,000/- is awarded for disfiguration. The appellant is entitled to total compensation of Rs.1,42,900/- (Rs.86,400 + Rs.24,000 + Rs.5,000 + Rs.2,500 + Rs.10,000 + Rs.10,000 + Rs.5,000).

9. The appeal is allowed and the award amount is enhanced from Rs.35,200/- to Rs.1,42,900/-. The learned Tribunal has awarded interest @12% per annum which is not disturbed on the original award amount of Rs.35,200/-. However, on the enhanced award amount, the rate of interest shall be @7.5% per annum from the date of filing of the claim petition up to the date of notice of deposit under Order XXI Rule 1 of the Code of Civil Procedure.

10. The enhanced award amount along with interest be deposited by respondent No.3 with UCO Bank A/c Binay Kumar, Delhi High Court Branch through Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) within a period of 30 days.

11. Upon the aforesaid deposit being made, UCO Bank is directed to release the same to the appellant by transferring the said amount to his Saving Bank Account without any

restriction of fixed deposit.

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

13. Copy of this order be also sent to UCO Bank through Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) under the signature of Court Master.

J.R. MIDHA, J

MARCH 10, 2010

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