

+ MAC.APP.No.573/2009Date of Decision: 3rd March, 2010

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SHIDDHI GOPAL DIXIT @ SIDDH
 GOPAL DIXIT Appellant
 Through : Mr. K.K. Dubey, Adv.

versus

SIYA RAM & ORS Respondents
 Through : Mr. Mohan Babu Aggarwal,
 Adv.

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.3,33,701/- has been awarded to him. The appellant seeks enhancement of the award amount.

2. The accident dated 7th December, 2006 resulted in grievous injuries to the appellant. The appellant was crossing the road when his right hand got crushed between the offending truck and a stationary truck parked therein. The appellant's right hand was amputated and his permanent disability was assessed as 85% as per the

disability certificate. The appellant was working as a fruit vendor. The learned Tribunal awarded Rs.25,000/- towards pain and suffering, Rs.41,341/- towards medical expenditure, Rs.15,000/- towards conveyance and special diet and Rs.2,52,360/- towards loss of earning capacity. The total compensation awarded is Rs.3,33,701/-.

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

- (i) The compensation be awarded for loss of income during the period of confinement/treatment of about one year.
- (ii) The compensation for loss of earning capacity be awarded.
- (iii) The compensation for pain and suffering be enhanced.
- (iv) The compensation be awarded for loss of amenities of life and disfiguration.

4. The learned Tribunal has computed the loss of earning capacity at Rs.2,52,360/- taking the minimum wages of Rs.3,505/- per month, applying the multiplier of 15 and taking the loss of earning capacity to be 40%. The increase in minimum wages due to inflation and rise in price index has not been taken into consideration.

5. 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 appellant is taken to be Rs.5,257.50 per month $[(Rs.3,505 + Rs.7,010)/2]$.

6. The learned Tribunal has taken the loss of earning capacity of the appellant to be 40%. The appellant has suffered permanent disability of 85% in respect of the right arm. The appellant is present in the Court and considering his injuries, the loss of earning capacity is taken to be 50%. Taking the income of the appellant to be Rs.5,257.50 per month, applying the multiplier of 15 and taking the loss of earning capacity to be 50%, the loss of earning capacity is taken to be Rs.4,73,175/- $[(Rs.5,257.50 \times 12 \times 15) \times 50\%]$.

7. The learned Tribunal has not awarded any compensation for loss of income during the period of treatment. The appellant has not placed on record the documents relating to the treatment and confinement for one year. In the facts and circumstances of this case, the period of treatment and confinement is taken to be six months and the loss of income for six months is assessed as Rs.31,545/- $(Rs.5,257.50 \times 6)$.

8. The learned Tribunal has awarded compensation of Rs.25,000/- towards pain and suffering. 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.”

9. Following the aforesaid judgment, the compensation for pain and suffering is enhanced from Rs.25,000/- to Rs.1,00,000/-. Rs.1,00,000/- is awarded towards loss of amenities of life and Rs.1,00,000/- towards disfiguration.

10. The appellant is entitled to total compensation of Rs.8,61,061/- (Rs.41,341/- towards medical expenditure, Rs.15,000/- towards conveyance and special diet, Rs.31,545/- towards loss of income, Rs.4,73,175/- towards loss of earning capacity, Rs.1,00,000/- towards pain and suffering, Rs.1,00,000/- towards loss of amenities of life and Rs.1,00,000/- towards disfiguration).

11. The appeal is allowed and the award amount is enhanced from Rs.3,33,701/- to Rs.8,61,061/- along with interest @8% per annum from the date of filing of the 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 interest be deposited by respondent No.3 with UCO Bank A/c Siddhi Gopal Dixit, **Patiala House Branch 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 same to the claimant. 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 award amount for a period of one year.
- (ii) Fixed deposit in respect of 10% of the award amount for a period of one and a half years.
- (iii) Fixed deposit in respect of 10% of the award amount for a period of two years.
- (iv) Fixed deposit in respect of 10% of the award amount for a period of two and a half years.
- (v) Fixed deposit in respect of 10% of the award amount for a period of three years.

- (vi) Fixed deposit in respect of 10% of the award amount for a period of three and a half years.
- (vii) Fixed deposit in respect of 10% of the award amount for a period of four years.
- (viii) Fixed deposit in respect of 10% of the award amount for a period of four and a half years.
- (ix) Fixed deposit in respect of 10% of the award amount for a period of five 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.

J.R. MIDHA, J

MARCH 03, 2010

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