

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

+ MAC.APP.No.11/2010

Date of Decision:1st June, 2010

%

RAKESH RAKHEJA Appellant
Through: Mr. O.P. Mannie, Adv.

versus

HL KASHYAP & ANR Respondents
Through: Mr. Kanwal Choudhary, Advocate
for R-2.

**CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA**

- | | | |
|----|---|------------|
| 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 Claims Tribunal whereby compensation of Rs.1,15,533/- has been awarded to the appellant. The appellant seeks the enhancement of the award amount.

2. The accident dated 3rd September, 1999 resulted in grievous injuries to the appellant. The appellant was driving his two wheeler scooter near Atta Chowk, Noida, when he was hit by car bearing No.DL-6CC-6566. The appellant suffered compound fracture shaft femur of right leg. The appellant was admitted in Noida Orthopedic Hospital from

03.09.1999 to 05.09.1999 and a rod/K-nail was inserted in the fractured leg. The appellant thereafter took treatment from Panacea, Sector-12, Noida and underwent physiotherapy exercises at Friends Orthopedic and Physiotherapy Centre, Friends Colony, New Delhi. The appellant also consulted doctors of Safdarjung Hospital, AIIMS, Lok Nair Hospital, VIMHANS Hospital, Sir Ganga Ram Hospital, Spring Meadows Hospital and Ram Lal Kundan Lal Orthopedic Hospital. The appellant was admitted in Ram Lal Kundan Lal Orthopedic Hospital from 20th September, 2000 to 23rd September, 2000 where a fresh K-nail was inserted in the right leg of the appellant along with bone grafting.

3. On 20th November, 2000, the appellant was again admitted in Ram Lal Kundan Lal Orthopedic Hospital where the nail was removed and he was discharged from the hospital on 23rd November, 2000. The appellant remained under OPD Treatment till 13th December, 2009 and he resumed his duties on 14th December, 2009.

3. The injuries suffered by the appellant resulted in the permanent disability to the extent of 15% in respect of right lower limb.

4. The appellant was 24 years old at the time of accident and was unmarried at that time. The appellant was working as an accountant with M/s Arora Grover Bajaj and Co. earning Rs.5,000/- per month as salary and Rs.800/- per month as conveyance but due to the accident, the appellant could not

resume his duties till 15th July, 2001. The letter of the employer was proved as Ex.PW-1/103. The appellant was unable to qualify the ICWAI examination due to the accident.

5. The appellant engaged an attendant with effect from 6th September, 1999 to 5th February, 2000 (five months) at a salary of Rs.3,000/- which was proved vide Ex.PW-1/104.

6. The Claims Tribunal awarded Rs.30,000/- towards pain and suffering, Rs.56,783/- towards medical expenses, Rs.12,750/- on account of permanent disability, Rs.10,000/- towards special diet and Rs.6,000/- towards attendant charges. The total compensation awarded was Rs.1,15,533/-.

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

- (i) The compensation be awarded for loss of salary during the period of treatment.
- (ii) The compensation be awarded for loss of earning capacity due to permanent disability.
- (iii) The compensation for pain and suffering be enhanced.
- (iv) The compensation be awarded for loss of amenities of life.
- (v) The compensation be awarded for disfiguration and loss of matrimonial prospects.
- (vi) The compensation be also awarded for loss of studies.

8. The learned counsel for the respondent vehemently opposed this appeal and submitted that no ground for enhancement is made out and the compensation awarded by the Claims Tribunal is just, fair and reasonable.

9. The appellant remained under treatment for about 10 months and the Claims Tribunal has not awarded any compensation for loss of salary during the period of treatment. The appellant was earning Rs.5,000/- per month and, therefore, lump-sum amount of Rs.30,000/- is awarded towards loss of earning capacity during the period of treatment.

10. In respect of the permanent disability, the Claims Tribunal has awarded a sum of Rs.12,750/- by applying the multiplier of 17 and taking the permanent disability as 15%. The appellant was earning Rs.5,000/- per month at the time of the accident. By applying the multiplier of 17 and taking the loss of earning capacity as 15%, the loss of earning capacity is computed to be Rs.1,53,000/- ($\text{Rs.5,000} \times 12 \times 17 \times 15\%$). The finding of the Claims Tribunal in this regard is, therefore, set aside and compensation for loss of earning capacity is enhanced from Rs.12,750/- to Rs.1,53,000/-.

11. The Claims Tribunal has awarded Rs.30,000/- for pain and suffering which do not warrant any interference. However, the Claims Tribunal has not awarded any compensation towards loss of amenities of life, disfiguration and reduction of matrimonial prospects. Rs.25,000/- has

been awarded towards loss of amenities of life, Rs.15,000/- towards disfiguration and Rs.15,000/- towards reduction of matrimonial prospects. The Claims Tribunal has also not awarded any compensation for loss of studies. The appellant was pursuing ICWAI and one year of his education was wasted due to the accident. Rs.10,000/- is awarded for loss of studies.

12. The appellant kept an attendant at a salary of Rs.3,000/- per month for a period of five months, which was proved vide Ex.PW-1/104. Rs.15,000/- is awarded to the appellant towards the attendant charges. The total compensation is computed to be Rs.3,59,783/- (Rs.1,53,000 + Rs.30,000 + Rs.30,000 + Rs.25,000 + Rs.15,000 + Rs.15,000 + Rs.10,000 + Rs.15,000 + Rs.56,783 + Rs.10,000).

13. The appeal is allowed and the award amount is enhanced from Rs.1,15,533/- to Rs.3,59,783/-. The learned Tribunal has awarded interest @9% per annum which is not disturbed on the original award amount of Rs.1,15,533/-. However, on the enhanced award amount, the rate of interest shall be @7.5% per annum from the date of filing of the petition till realization.

14. The enhanced award amount along with interest be deposited by respondent No.2 with UCO Bank A/c Rajesh Rakheja, Delhi High Court Branch within 30 days.

15. Upon the aforesaid deposit being made, UCO Bank is directed to release 10% of the same to 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 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.

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

17. 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.

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

19. 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.

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

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

22. 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.

23. 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).

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

25. 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.

JUNE 01, 2010
HL

J.R. MIDHA, J