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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on: 18th November, 2011
Pronounced on: 23rd November, 2011

+ **MAC APP. 847/2010**

SATISH KUMAR Appellant
Through: Mr. G.D. Mishra Advocate.

Versus

PRAFUL KUMAR & ORS. Respondents
Through: Mr. Manoj R. Sinha, Advocate with
Mr. Mohan Babu Agarwal, Advocate
MR. Harkesh Chand Aggarwal
Advocate for R-3/NIC.

CORAM:

HON'BLE MR. JUSTICE G.P. MITTAL

1. Whether reporters of local papers may be allowed to see the Order?
2. To be referred to the Reporter or not?
3. Whether the Order should be reported in the Digest?

yes

J U D G M E N T

G. P. MITTAL, J.

1. This Appeal is for enhancement of compensation for the injury suffered by the Appellant Satish Kumar in an accident which took place on 11.03.2007 at about 11:25 AM with the motorcycle bearing No.DL-9SP-2987 on which the Appellant was travelling as a pillion rider. The motorcycle was struck by a Maruti car bearing No.HR-26-AH-8047 which was driven by Respondent No.1 and owned by Respondent No.2 and insured

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with Respondent No.3 Insurance Company. The Appellant was taken to Safdarjung Hospital where he was medically examined vide MLC bearing No.44671/2007. He suffered *supracondylar fracture femur right with condyle fracture tibia right*. He was operated initially in Safdarjung Hospital on 12.03.2007 after which he was discharged from the Safdarjung Hospital on 20.03.2007 and was then admitted in Sinha Fracture and Surgical Hospital for 18 days where plates inserted in his right leg.

2. The Tribunal found that the accident took place on account of rash and negligent driving by Respondent No.1. By impugned award, the Tribunal granted the following compensation:-

1.	Medicines & Treatment	₹ 80,000/-
2.	Loss of Income	₹ 29,000/-
3.	Pain & suffering	₹ 25,000/-
4.	Conveyance & special diet	₹ 16,000/-
	TOTAL	₹ 1,50,000/-

3. The Appellant's grievance is that he was not granted any compensation towards the permanent disability, future treatment and expenditure for the services of the attendant. It was urged that the deduction was made in the monthly salary while awarding loss of income as the Appellant's monthly salary as

per the salary certificate was ₹ 7437/- per month but he was granted the compensation taking the salary at ₹ 4720/- per month.

4. On the other hand, it is urged by the learned counsel for Respondent No.3 that the compensation awarded is just and reasonable which does not call for any enhancement.
5. Photocopy of a disability certificate issued by the Rao Tula Ram Memorial Hospital, Jaffarpur, New Delhi on 06.10.2009 i.e. after the decision of the Tribunal, was placed on record. It is important to note that the Appellant was employed as a *Safaikaramchari* in Municipal Corporation of Delhi (MCD) and he continued to work as such till date. It was conceded by the learned counsel for the Appellant that his job was not affected but he is disabled for all times to come. In my view, the Appellant cannot be granted any compensation for loss of earning capacity as he continued to get the same salary, even his future prospects in the form of increment etc. is not affected. It is a different matter that he would be entitled to the compensation for loss of amenities in life which, I would deal a little later. At this moment, it would be relevant to refer to the latest judgment of the Supreme Court in *Raj Kumar v. Ajay Kumar & Anr. (2011) 1 SCC 343*, where it was laid down that, for awarding compensation in case of permanent disability, the Court has to find out the functional disability which reduces the

earning capacity. It would be fruitful to extract Paras 13, 14 and 15 of the report hereunder:-

“13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he

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may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not be found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity."

15. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may."

6. Thus, there is no manner of doubt that the Appellant is not entitled to any compensation for the permanent disability under the head of loss of earning capacity.

LOSS OF INCOME

7. I have perused the last salary certificate Ex.PW-1/27 placed on the Tribunal record. The Appellant's gross salary was ₹ 7437/- for the month of February, 2007. There was deduction of ₹ 592/- towards GPF, ₹ 2125/- towards advance obtained by the Appellant and ₹ 10/- towards house rent paid by him to his employer. This amount of ₹ 2717/- was part of the Appellant's salary and could not have been deducted from the monthly salary while awarding loss of income. Thus, instead of ₹ 29,0000/-, the Appellant is entitled to a sum of ₹ 7437/- x 6 = ₹ 44,622/- round off ₹ 45,000/-.

MEDICINES AND TREATMENT

8. The Appellant was awarded a compensation of ₹ 80,000/- on the basis of bills of ₹ 75,711/- proved on record. The Appellant had to undergo two surgeries, one in Safdarjang Hospital and the other in Sinha Fracture and Surgical Hospital. The Appellant in his Affidavit Ex.PW-1/A testified that he spent about ₹ 1,00,000/- on his treatment, medicines and special diet. A sum of ₹ 80,000/- towards medicines and treatment and ₹ 16,000/- towards conveyance and special diet were awarded by the Tribunal. The Appellant deposed that he was getting the regular

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dressing through the nearby doctors. No medical evidence of any future surgery was placed on record by the Appellant. The Court, however, cannot lose sight of the fact that there is 44% physical impairment in relation to his right lower limb as per the Disability Certificate dated 06.10.2009 issued by the Medical Board of Rao Tula Ram Memorial Hospital of Delhi Government. The Appellant testified in his Affidavit that the Permanent Disability Certificate was yet to be issued to him. Since the Appellant's treatment was still going on, perhaps the Disability Certificate could not be issued. The same is not relevant for the purpose of assessment of the loss of his earning capacity for the reasons stated earlier in this judgment, yet the same is relevant for the purpose of considering whether the Appellant would need some future treatment. There is shortening of Appellant's leg. Even if, he was not to undergo any further surgery, he would definitely require some physiotherapy from time to time.

9. In *Nagappa v. Gurudayal Singh* (2003) 2 SCC 274 it was held that it was not improper to take into account expenditure genuinely and reasonably required to be incurred for future medical treatment. Future medical expenses required to be incurred can be determined only on the basis of fair guesswork after taking into account increase in the cost of medical treatment. In the absence of any evidence of future surgery, in

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my view, the Appellant is entitled to a sum of ₹ 5,000/- towards future medical treatment i.e. physiotherapy.

PAIN AND SUFFERING

10. A sum of ₹ 25,000/- awarded by the Tribunal seems to be just and reasonable.

LOSS OF AMENITIES IN LIFE

11. As stated earlier, the Appellant suffered 44% physical impairment in relation to his right lower limb. He cannot run, squat, he cannot even walk without the help of the crutches. He is therefore, entitled to another sum of ₹ 1,50,000/- (Rupees one lac fifty thousand only) towards loss of expectancy and loss of amenities in life.

ATTENDANT CHARGES

12. In his affidavit Ex.PW-1/A, the Appellant stated that he engaged the services of an attendant for 50 days during his critical condition and paid him @ ₹ 200/- per day. In his cross-examination, the Appellant admitted that he had not placed on record any proof regarding spending a sum of ₹ 10,000/- on attendant. In the absence of any documentary evidence, the Tribunal perhaps did not award any amount for the services of an attendant. In the absence of any documentary evidence one cannot be sure whether the Appellant engaged an attendant on payment of any charge. At the same time, it is established on

record that the Appellant remained admitted for 09 days in Safdarjang Hospital and then for 18 days in Sinha Fracture and Surgical Hospital. The Appellant then had to visit doctor for dressing. Considering the nature of injury in the left leg resulting in 44% physical impairment and the fact that even now he can only walk with crutches, it has to be believed that he was accompanied by some attendant whether a paid one or a family member.

13. In *Delhi Transport Corporation and Anr. v. Lalita AIR 1981 Delhi 558*, this Court held that there cannot be deduction if domestic help is obtained from a family member. The High Court observed as under:-

".....A wrong doer cannot take advantage of this 'domestic element'. If the mother renders service to her, instead of a nurse, it is right and just that she should recover compensation for the value of the services that the mother has rendered to her. Mother's services were necessitated by the wrong doing and the injured should be compensated for it. (Cunnigharn v. Harrison 3 All E.R. 463) The services of a wife and mother are worth more than those of a house-keeper because she is in constant attendance and does many more things than a house-keeper. (Regan v. Williamson (1976) 2 All E.R. 241)."

14. The Appellant claimed attendant charges @ ₹ 200/- per day. The minimum wages on an unskilled worker on the date of the accident were ₹ 133/- per day. I award a compensation at this rate i.e. ₹ 133/- x 50 = ₹ 6650/- round off ₹ 7,000/-.

15. As discussed above, the total enhanced compensation awarded by this Court works out as under:-

Head	Awarded by the Tribunal in (₹)	Awarded by This Court in (₹)	Increase
Medicines & Treatment	80,000/-	80,000/-	NIL
Loss of Income	29,000/-	45,000/-	16,000/-
Pain & suffering	25,000/-	25,000/-	NIL
Conveyance & special diet	16,000/-	16,000/-	NIL
Loss of amenities in life	NIL	1,50,000/-	1,50,000/-
Future Physiotherapy	NIL	5,000/-	5,000/-
Attendant charges	NIL	7,000/-	7,000/-
	1,50,000/-	3,28,000/-	1,78,000/-

16. The Tribunal awarded interest @ 9% per annum which seems to be reasonable considering that the inflation is in double digit and the Nationalized Banks are offering interest at this rate on FDRs for a period of one year and above. The enhanced amount of compensation i.e. ₹ 1,78,000/- (Rupees One lac seventy eight thousand only) shall also carry interest @ 9% per annum from the date of filing of the petition till realization of the amount. Respondent No.3 M/s. National Insurance Company Limited is directed to pay the enhanced amount within a period of 30 days. 50% of the enhanced amount shall be deposited in the Appellant's saving accounts in UCO Bank,

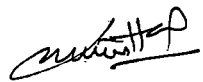
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Delhi High Court Branch which the Appellant shall be entitled to withdraw. Rest 50% shall be deposited in the form of FDR in the said Bank for a period of five years. The Appellant shall be entitled to interest on the amount which shall be credited in his saving account on quarterly basis.

17. The Appeal is allowed and the impugned award is modified in the above terms. No costs.

CM APPL.22372/2010 (for additional evidence)

18. This application has become infructuous and the same is accordingly dismissed.
19. Copy of the order be sent to the Trial Court for information and compliance.


(G.P. MITTAL)
JUDGE

NOVEMBER 23, 2011

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