

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

Date of decision: 30th October, 2012

+ **MAC. APP. 193/2008**

MASTER RISHABH AGGARWAL @ SONU Appellant
Through: Mr. O.P. Mannie, Adv.

versus

SH. RAJ PAL SINGH & ORS. Respondents
Through: Mr. J.P. N. Shahi, Adv. for R-3/OIC.
Ms. Nanita Sharma, Adv. with
Ms. Preeti Bhardwaj, Adv. for R-5.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appeal is for enhancement of compensation of ₹8,87,000/- awarded in favour of Master Rishabh Aggarwal who suffered very serious injuries and got paraplegic in a motor vehicle accident which occurred on 12.06.1997.
2. On appreciation of evidence the Claims Tribunal found that as the tempo driver stopped without any indication and the car that was following the tempo was not at a safe distance, there was composite negligence which was apportioned to the extent of 50% on each of them. The finding on negligence has not been challenged by the Respondent Insurance Company, the same, therefore, has attained finality.
3. The Claims Tribunal awarded a compensation of ₹8,87,000/- which is tabulated hereunder:-

Sl.No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Loss of Future Income	₹75,000/-
2.	Actual Medical Expenses	₹ 1,41,908/-
3.	Future Medical Expenses	₹ 1,00,000/-
4.	Attendant Expenses	₹ 2,70,000/-
5.	Conveyance & Special Diet	₹ 1,00,000/-
6.	Pain & Suffering	₹ 1,00,000/-
7.	Loss of Amenities of Life	₹ 1,00,000/-
	Total Rounded off	₹ 8,86,908/- ₹ 8,87,000/-

4. During the course of hearing, learned counsel for the Appellant challenges award of compensation towards loss of future income and the compensation awarded towards attendant charges. He argues that the Section 168 of the Act enjoins payment of just and fair compensation. Award of compensation of ₹ 75,000/- towards loss of future income was very paltry. The Appellant's father was in business and was an income tax payee. He (the Appellant) would have stepped into the shoes of his father and would have earned a good income.
5. It is urged that the Appellant examined PW-4 Babu Lal who was the Attendant, employed by the Appellant's father. He was initially paid a salary of ₹2,000/- per month which was increased to ₹3,000/- per month. The compensation of ₹2,70,000/- was very less. In any personal injury case, the compensation awarded should be substantial, just and fair and not a token amount.

6. On the other hand, it is urged by the learned counsel for the Respondent Insurance Company that the compensation awarded is just and reasonable.

LOSS OF FUTURE EARNING CAPACITY

7. In order to prove the injuries and physical condition of the Appellant, he examined PW-2 Dr. Tarun Gera from Sunder Lal Jain Hospital who had treated the Appellant during his admission in Sunder Lal Jain Hospital and PW-8 Dr. Ashok Kumar Lal, Senior Physician who examined the Appellant for the purpose of issuance of the Disability Certificate. The Claims Tribunal dealt with their testimonies in Paras 24 and 25 of the impugned judgment. The same are extracted hereunder:-

“24. PW9 Dr. Ashok Kumar Lal- Senior Physician from Dr. Ram Manohar Lal Hospital testified that they had examined the patient Rishabh Aggarwal @ Sonu after the medical board was constituted on the direction of court and he was one of the member of the board. He proved the disability certificate Ex.PW8/1 issued by them. He stated that there is no improvement in the physical condition of patient and the mental condition is also not likely to improve. He further stated that the patient shall face day to day problems including the problem in his movement, eating. He also stated that the patient will not be able to undertake any service/job.

25. PW2 Dr. Tarun Gera from Sunder Lal Jain Hospital stated that he had examined the patient and further stated that from the present condition of the patient it appears that he is not likely to recover from the disability of left side of the body. He stated that due to paralysis of left side he cannot perform any movement and cannot sit or stand without support.”

8. It was thus established that the Appellant was unable to sit or stand on his own. It was, therefore, clear that the Appellant would be unable to carry out any work at all. The Claims Tribunal in Para 23 of the impugned

judgment held that although the disability suffered was 80% with respect to the whole body, but on account of the Appellant's immobility, he had suffered functional disability to the extent of 100%. In other words, the Claims Tribunal accepted that there was total loss of earning capacity. Thus, this finding is based on expert evidence and cannot be faulted and is not even challenged.

9. Learned counsel for the Appellant has taken me through cross-examination of R5W1 Umesh Chand Aggarwal, the Appellant's father who stated in cross-examination that he was an income tax payee. The details of the income or the business of the Appellant's father was not proved on record. The Court, however, can assume that the Appellant would have at least completed his schooling. Thus, the Appellant was entitled to the compensation on the basis of the Minimum Wages of a Matriculate with an addition of 30% towards inflation on the basis of *Santosh Devi v. National Insurance Company Ltd. & Ors., 2012 (4) SCALE 559*. The Minimum Wages of a Matriculate on 12.06.1997 were ₹2232/- per month. The loss of future earning capacity thus comes to ₹6,26,745/- (2232/- + 30% x 12 x 18) as against ₹75,000/- awarded by the Claims Tribunal.

ATTENDANT CHARGES

10. I have already observed above that the Appellant was unable to sit or stand on his own. He was totally immobile. He definitely needed service of an Attendant. Even for his essential activities of going to the toilet, taking bath, etc. he needed a full time Attendant.

11. The Appellant examined PW-4 Babu Lal who deposed that he was initially getting a salary of ₹2,000/- per month which was subsequently raised to ₹3,000/- per month. No documentary evidence with regard to payment of salary was produced. At the same time, it is difficult for the family members to look after a paraplegic person throughout the day. They would definitely need an Attendant to look after him. Moreover, even if the services of an attendant are rendered gratuitously by one or the other family member, the Appellant, cannot be deprived of the compensation for the benefit of the wrongdoer.

12. In *Delhi Transport Corporation and Anr. v. Kumari Lalita* 22 (1982) DLT 170 (DB), it was held as under:-

“(33) Counsel for the Corporation argued that since Lalita is being looked after by her mother compensation ought to be reduced. We do not agree. In the case of Lalita the main question is of future care. Today she is being helped by her mother. But that does not mean that she is not to be compensated for services rendered to her. A legal agreement between mother and daughter is not necessary to claim compensation. We cannot deduct what is described as the 'domestic element' from the cost of care. 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. (Cunnigham v. Harrison (1973) 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)”.

13. The Minimum Wages of an unskilled worker on the date of the accident were ₹1784/- per month. On the multiplier of 18, the Appellant is

entitled to compensation of ₹3,85,344/- (1784/- x 12 x 18) as against compensation of ₹2,70,000/- awarded by the Claims Tribunal.

14. The compensation is thus enhanced by ₹6,67,089/- which shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.
15. Respondents Insurance Companies are directed to deposit the enhanced compensation along with proportionate interest with the Claims Tribunal within six weeks which shall be converted into fixed deposits in any Nationalized Bank.
16. This accident took place in the year 1997, i.e. 15 years ago, 75% of the enhanced compensation shall be held in fixed deposit for a period of 15 years. Rest 25% along with proportionate interest shall be released on deposit.
17. The Appellant would be entitled to quarterly interest on the amount deposited.
18. The Appeal is allowed in above terms.
19. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 30, 2012

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