

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

Reserved on: 8th February, 2012

Pronounced on: 13th February, 2012

+ **FAO. No.200/2000**

OM PRAKASH.

..... Appellant

Through: Mr. Peeush Sharma, Advocate

Versus

AMITABH KHOSLA & ORS.

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appeal is for enhancement of compensation of ₹41,316.30 awarded to the Appellant who suffered grievous injuries in an accident which took place on 09.02.1990 while the Appellant was riding on a two wheeler scooter No.DBZ 9422 and was hit by a Maruti car bearing No.DNB 4856 driven by the First Respondent. It is not in dispute that the offending Maruti car was insured with M/s. Oriental Insurance Co. Ltd., the Third Respondent. On facts, the Claims Tribunal found that the accident was caused on account of negligent and rash driving by the First Respondent. There is no challenge to the said

finding by any of the Respondents. The Claims Tribunal awarded the compensation of ₹41,316/- under various heads which can be extracted hereunder:

S.No.	Compensation under various heads	Awarded by the Claims Tribunal
1	Medical Expenses for the Treatment	₹ 2116/-
2	Conveyance, Special Diet and Medicine	₹ 2,000/-
3	Loss of Injuries	₹ 20,000/-
4	Pain, Shock and Suffering	₹10,000/-
5	Attendant Charges	₹ 7,200/-
	TOTAL	₹ 41,316/-

2. The principle governing grant of compensation in injury and death cases is to place the claimant in almost the same financial position as they were in before the accident. In *Concord of India Insurance Co. Ltd. v. Smt. Nirmala Devi & Ors., 1979 (4) SCC 365*, the Supreme Court observed that the determination of compensation must be liberal, not niggardly since the law values life and limb in a free country in generous scales.

3. In *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Mrs. Susamma Thomas & Ors.*, 1994 ACJ 1, the Supreme Court held as under:-

“5.....The determination of the quantum must answer what contemporary society "would deem to be a fair sum such as would allow the wrongdoer to hold up his head among his neighbours and say with their approval that he has done the fair thing". The amount awarded must not be niggardly since the law values life and limb in a free society in generous scales'. All this means that the sum awarded must be fair and reasonable by accepted legal standards.”

4. In *Oriental Insurance Co. Ltd. v. Ram Prasad Varma & Ors.*, 2009 (2) SCC 712, the Supreme Court held that the expression ‘just’ must be given its logical meaning. Though, the compensation awarded cannot be a bonanza or a source of profit but in considering as to what would be just and equitable, all facts and circumstances must be taken into consideration.

(I) **COMPENSATION TOWARDS EXPENSES ON TREATMENT AND PURCHASE OF MEDICINES**

5. The learned counsel for the Appellant has taken me through the Trial Court record and has also placed on record a typed copy of the amount spent on the treatment on referring to various pages in the Trial Court record it can be seen that the Appellant spent a sum of ₹ 16,508/- towards the treatment. It is noteworthy that the bill paid to the Ganga Ram Hospital at page 113 of the Trial Court was for ₹7,251/- and the charges

for the MRI at page 217 of the Trial Court record was ₹4,000/-. It is urged by the learned counsel for the Appellant that many more such bills could not be preserved. In the circumstances of the case, the Appellant is entitled to a compensation of ₹20,000/- enhanced from ₹2,116/- for his hospitalization, purchase of medicines and for various tests undertaken by him in Ganga Ram Hospital and elsewhere.

(II) CONVEYANCE AND SPECIAL DIET & OTHER HEADS

6. The Appellant suffered serious injuries on his head when he was admitted in Dr. Ram Manohar Lohia Hospital immediately after the accident. There were injuries on his forehead; he was bleeding through his left ear. The Appellant was thereafter removed to Sir Ganga Ram Hospital. C.T. Scan was got done immediately on his admission on 09.02.1990 itself. The Appellant remained admitted in the earlier said hospital from 09.02.1990 to 18.02.1990. The Appellant entered the witness box as PW8 and deposed that on account of the injuries suffered, he became unconscious and regained consciousness after 10 days in Sir Ganga Ram Hospital. He testified that his memory has become weak. He suffers from headache every now and then. He deposed that he had to take special diet for two years as prescribed by the Doctor.
7. Harnam Das (PW7), the Appellant's father testified that he spent ₹10,000/- on conveyance needed for the treatment of his

son. He used to spent ₹50/- per day for special diet for a period of two years. He deposed that the Appellant was working as a Salesman with him and he used to give him a salary of ₹2,000/- per month. After two years, he started working with him for two to three hours.

8. Dr. J.D.A. Rana (PW4), an ENT Specialist deposed that he examined the Appellant(Om Prakash) on 22.08.1994. He was attending to him since 11.03.1992 for the ailment in his ear. On 22.08.1994, his audiogram was done which revealed hearing within normal limits in the right ear. His left ear showed a conductive hearing loss of 35 decibels in the higher frequencies. He estimated that the loss of hearing as on 22.08.1994 to be about 15%. The testimony of this witness was not challenged in cross-examination.
9. PW2 Dr. S.K. Sogani from Ganga Ram Hospital deposed that on 09.02.1992 at 6:00 pm, he examined the Appellant being a Neuro Surgeon. A routine brain scan was got done which showed that both sides of the forebrain were having clots. The Appellant was having wounds on his forehead which were sutured at RML Hospital immediately after the accident. Bleeding from his left ear and vomiting was persisting since the time of the accident. He deposed that he examined the patient on 11.07.1990, 27.08.1990 and 07.08.1992 after he was discharged from the Hospital. On 18.02.1990, the Appellant had complained of forgetfulness and weakness in having sex

for which a brain E.E.G. was done on 10.08.1992. The E.E.G. was conducted by Dr. Col. R.M. Dhamija which was found to be abnormal. The patient was put on treatment. He deposed that such a patient could have permanent partial memory impairment. He proved various prescriptions given by him. He deposed that he charged ₹200/- per consultation. In cross-examination, the witness deposed that to assess the percentage of loss of memory, a memory test was required to be performed by a Neuro Psychologist. He did not advise this test to be conducted.

10. From the evidence on record, it is established that the Appellant suffered injuries resulting into his hospitalization for 10 days and a prolonged treatment as an outpatient for more than four years. The Appellant had to periodically approach the Doctor for consultation and treatment. He was required to be adequately compensated for transportation charges for visiting the Doctor. Similarly, the Appellant needed special diet considering the nature of injuries suffered by him. For 50 such visits @ ₹ 200/- per visit, I would award a sum of ₹10,000/- towards conveyance. I would feel that a sum of ₹5,000/- in lump sum towards special diet would be just and fair and accordingly award the same.
11. The Claims Tribunal did not award any compensation towards loss of earning. The Appellant was aged 24 years and was working as a Salesman at his father's shop Bose Electronics.

The Appellant examined PW6 M.S. Verma, the Accountant of Bose Electronics to prove the salary certificate Ex.PW6/1. The certificate says that the Appellant was being given a salary of ₹2,000/- per month. In the Assessment Year 1990-91 any income beyond ₹18,000/- was subject to Income Tax. The Appellant's father had a good showroom in the name and style of Bose Electronics. Obviously, the Appellant who was a young boy of 24 years at the time of the accident would naturally assist his father at the shop. Even if the certificate Ex.PW6/1 is ignored, I would assess the services rendered by him @ ₹1,000/- per month and thus award a compensation of ₹12,000/- for not being able to attend to his work for one year. The compensation of ₹10,000/- considering the nature of injuries needs to be enhanced to ₹20,000/-. Compensation of ₹20,000/- towards the disability in hearing and loss of amenities is just and fair. I would also not interfere in the award of compensation of ₹7,200/ as attendant charges.

12. The compensation is recomputed as under:-

S.No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by the High Court
1.	Medical Expenses for the Treatment	₹ 2,116/-	₹ 20,000/-
2.	(a) Conveyance, (b) Special Diet	₹ 2,000/-	₹10,000/- ₹5,000/-

3.	Loss of Injuries/ Amenities	₹20,000/-	₹20,000/-
4.	Pain, Shock and Suffering	₹10,000/-	₹20,000/-
5.	Attendant Charges	₹ 7,200/-	₹ 7,200/-
6.	Loss of Earning	--	₹ 12,000/-
	Total	₹41,316/-	₹ 94,200/-

13. The overall compensation is enhanced from ₹41,316/- to ₹ 94,200/-.
14. The Claims Tribunal granted interest @ 12% per annum but restricted the grant of interest to just five years on the ground that the Appellant did not take steps to pursue his case. I have perused the Trial Court record. The delay can be attributed to the Appellant for just two years. The claim petition was filed on 07.02.1991 and came to be decided on 09.03.2000 i.e. after nine years. The Appellant, therefore, would be entitled to interest @ 12% (as awarded by the Claims Tribunal) for a period of seven years instead of five years.
15. The enhanced compensation of ₹52,884/- shall carry interest @ 12% per annum as granted by the Tribunal for a period of seven years upto the date of the award.

16. The enhanced compensation shall carry interest @ 7.5% per annum from the date of the award i.e. 09.03.2000 upto the date of the payment.
17. The enhanced compensation along with interest shall be deposited by the Respondent No.3 Oriental Insurance Co. Ltd. with the Registrar General of this Court within 30 days. Since this is an old case, the entire enhanced amount on deposit shall be released immediately.
18. In terms of the above, the Appeal is disposed of.

(G.P. MITTAL)
JUDGE

FEBRUARY 13, 2012
pst