

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

*Decided on: 10<sup>th</sup> September, 2012*

+ **FAO. 253/2000**

MANORAMA JAIN

..... Appellant

Through

Mr. Navneet Goyal with Ms. Suman N.  
Rawat, Advocates

versus

D.D.A. & ORS

.... Respondents

Through

Mr. Vaibhav Mirg with Mr. Arun Birbal,  
Advocates

+ **FAO. 261/2000**

S.C. JAIN

..... Appellant

Through

Mr. Navneet Goyal with Ms. Suman N.  
Rawat, Advocates

versus

D.D.A. & ORS

.... Respondents

Through

Mr. Vaibhav Mirg with Mr. Arun Birbal,  
Advocates

**CORAM:**

**HON'BLE MR. JUSTICE G.P.MITTAL**

### **J U D G M E N T**

**G. P. MITTAL, J. (ORAL)**

1. These two Appeals (FAO. 253/2000 and FAO. 261/2000) arise out of a common judgment dated 18.03.2000 passed by the Motor Accident Claims

Tribunal(the Claims Tribunal) whereby a compensation of ₹1,30,000/- and ₹35,000/- was awarded in favour of Appellants Manorama Jain and Subhash Chand Jain respectively for having suffered injuries in a motor vehicle accident which occurred on 15.05.1983.

2. The finding on negligence has not been challenged by the Respondents (the driver and the owner of the offending vehicle); thus the same has attained finality.
3. The following contentions are raised on behalf of the Appellants:
  - (i) In case of Appellant Manorama Jain, she suffered permanent disability to the extent of 80%; award of lump sum compensation of ₹20,000/- towards permanent disability is on the lower side.
  - (ii) No compensation was awarded towards loss of amenities.
  - (iii) In case of Appellant Subhash Chand Jain, it is stated that no compensation was awarded towards loss of amenities and the compensation awarded under pecuniary and non-pecuniary heads is low.
  - (iv) This Claim Petition was filed in the year 1983, but no interest was awarded to the Appellant.
4. The injuries in case of Appellant Manorama Jain were quite serious. She suffered compound fracture of both legs of tibia and fibula. She received injuries on the root of nose and on the lateral and middle part of her left arm. She remained admitted in Tirath Ram Hospital from 15.05.1983 to 04.06.1983, in Friends Medical Centre from 22.06.1983 to 12.08.1983 in Joshipura Jaslok Hospital, Bombay for 22 days in March, 1984, and in

Ganga Ram Hospital from 21.07.1987 to 27.07.1987. The Appellant was able to prove the expenditure in the shape of bills worth ₹70,000/-. The Claims Tribunal awarded a compensation of ₹75,000/- towards medical expenditure. A compensation of ₹10,000/- each was awarded towards conveyance charges and special diet and ₹15,000/- towards pain and suffering.

5. The Appellant produced a disability certificate from a private Dr. Lt. Col. S.Paul Gujral who opined that the Appellant suffered 80% permanent disability. The Claims Tribunal did not accept the disability as the same was not issued by any Medical Board. Moreover, she never remained under treatment of Dr. Lt. Col. S. Paul Gujral.
6. By the order of this Court dated 15.02.2012, the Appellant was ordered to be examined by the Medical Board of Hindu Rao Hospital. Medical Certificate issued by Dr. Lt. Col. S.Paul Gujral was transmitted to the Medical Superintendent. In pursuance of this Court's order, a Medical Board was constituted who issued a disability certificate Ex.AW1/1. The Appellant examined Dr. Vivek Kumar Pathak, an Orthopaedics Surgeon to prove the disability. The Medical Board assessed the disability to the extent of 50% in respect of both lower limbs on account of difficulty in squatting on floor, sitting cross-legged and loss of muscle power of both limbs.
7. This accident occurred in the year 1983. The compensation has to be awarded as per the value of money at the relevant time. As stated earlier, Appellant Manorama Jain was able to prove the bills with respect to her treatment for a sum of ₹70,000/-. Things were very cheap in the year 1983. The Claims Tribunal was justified in awarding a compensation of ₹75,000/-

towards the medical treatment on the assumption that some of the bills might have been lost. Considering the value of money, the award of compensation of ₹10,000/- each towards conveyance charges and special diet is also just and reasonable.

8. During inquiry before the Claims Tribunal, it was claimed that Appellant Manorama Jain was working as a Partner in a firm and was earning ₹2,000/- per month. In cross-examination, she admitted that she was a housewife. The learned counsel for the Respondent referred to the testimony of Dr. Vivek Kumar Pathak who testified that there could be loss of muscle power because of advanced age. The learned counsel argues that this accident took place in the year 1983 and thus the examination by the Medical Board after 29 years of the accident would lose relevance. I would not agree. A medical certificate from a private Orthopaedics Surgeon was already on record whereby the Appellant was declared to have suffered permanent disability to the extent of 80%. AW1 Dr. Vivek Kumar Pathak, Orthopaedics Surgeon from Hindu Ram Hospital testified that evaluation of the percentage of disability had been done by the Board on the basis of the guidelines published in the report of the Committee on The Persons with Disabilities Act, 1995. There can be variation between the reports of Dr. Lt. Col. S.Paul Gujral and the Medical Board because of the guidelines issued under the Disabilities Act, 1995. In any case, I would accept the disability as given in the certificate Ex.AW1/1 issued by the Medical Board, Hindu Rao Hospital.
9. It was proved during inquiry that the Appellant was a housewife. On account of stiffness in both the legs, difficulty in squatting on the floor, sitting cross-legged and loss of muscle power in respect of both lower limbs,

the Appellant would have great difficulty in carrying out day to day household activities. I would, therefore, award compensation towards loss of the gratuitous services rendered by a housewife on the scale as given by this Court in *Royal Sundaram Alliance Insurance Co. Ltd. v. Master Manmeet Singh & Ors.*, MAC.APP. 590/2011, decided on 30<sup>th</sup> January, 2012. This Court noticed the following judgments of the Supreme Court:-

- (i) *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.* (1994) 2 SCC 176,
- (ii) *National Insurance Company Limited v. Deepika & Ors.*, 2010 (4) ACJ 2221,
- (iii) *Amar Singh Thukral v. Sandeep Chhatwal*, ILR (2004) 2 Del 1,
- (iv) *Lata Wadhwa & Ors. v. State of Bihar & Ors.*, (2001) 8 SCC 197,
- (v) *Gobald Motor Service Ltd. & Anr. v. R.M.K. Veluswami & Ors.*, AIR 1962 SC 1,
- (vi) *A. Rajam v. M. Manikya Reddy & Anr.*, MANU/AP/0303/1988,
- (vii) *Morris v. Rigby* (1966) 110 Sol Jo 834 and
- (viii) *Regan v. Williamson* 1977 ACJ 331 (QBD England),

and laid down the principle for determination of loss of dependency on account of gratuitous services rendered by a housewife. Para 34 of the judgment in *Master Manmeet Singh (supra)* is extracted hereunder:-

“34. To sum up, the loss of dependency on account of gratuitous services rendered by a housewife shall be:-

- (i) Minimum salary of a Graduate where she is a Graduate.

- (ii) *Minimum salary of a Matriculate where she is a Matriculate.*
- (iii) *Minimum salary of a non-Matriculate in other cases.*
- (iv) *There will be an addition of 25% in the assumed income in (i), (ii) and (iii) where the age of the homemaker is upto 40 years; the increase will be restricted to 15% where her age is above 40 years but less than 50 years; there will not be any addition in the assumed salary where the age is more than 50 years.*
- (v) *When the deceased home maker is above 55 years but less than 60 years; there will be deduction of 25%; and when the deceased home maker is above 60 years there will be deduction of 50% in the assumed income as the services rendered decrease substantially. Normally, the value of gratuitous services rendered will be NIL (unless there is evidence to the contrary) when the home maker is above 65 years.*
- (vi) *If a housewife dies issueless, the contribution towards the gratuitous services is much less, as there are greater chances of the husband's re-marriage. In such cases, the loss of dependency shall be 50% of the income as per the qualification stated in (i), (ii) and (iii) above and addition and deduction thereon as per (iv) and (v) above.*
- (vii) *There shall not be any deduction towards the personal and living expenses.*
- (viii) *As an attempt has been made to compensate the loss of dependency, only a notional sum which may be upto ₹ 25,000/- (on present scale of the money value) towards loss of love and affection and ₹ 10,000/- towards loss of consortium, if the husband is alive, may be awarded.*
- (ix) *Since a homemaker is not working and thus not earning, no amount should be awarded towards loss of estate."*

10. There is no evidence with regard to the Appellant's qualification. Thus, she has to be awarded compensation on the scale of minimum wages of a non-Matriculate. She was aged 34 years at the time of the accident. I would

make a guess work and assume effect on the Appellant's work to the extent of 50%. The compensation payable towards loss of earning capacity thus comes to ₹41,400/- (₹345 + 25% x 12 x 16 x 50%) as against the award of ₹20,000/- awarded by the Claims Tribunal.

11. Because of the disability, the Appellant would not be able to enjoy her day to day life. She is entitled to compensation of ₹25,000/- towards loss of amenities. The compensation of ₹15,000/- awarded towards pain and suffering is raised to ₹20,000/-.
12. Thus, the compensation stands enhanced by ₹51,400/-.
13. The Claims Tribunal declined to award any interest to the Appellant perhaps on the ground that the Appellant was to be blamed for delay in disposal of the Claim Petition. I have perused the Trial Court record. The Claim Petition was instituted on 01.11.1983 and came to be decided by a judgment dated 18.03.2000, that is, after 17 years. A perusal of the Trial Court record reveals that the Appellant was not taking steps for service of the Respondents. Even after the pleadings were completed, the case was posted for evidence in the year 1986. The Appellant produced her evidence piecemeal and concluded it only on 18.1999. Thus, the Appellant was largely to be blamed for the huge delay in disposal of the Claim Petition. The Respondents cannot be burdened with the grant of interest for the delay caused by the Appellant. In the circumstances, I would award interest @ 7.5% per annum for five years upto the date of the decision of the impugned judgment, that is, 18.03.2000 and the same rate of interest thereafter from the date of the filing of the Appeal till its payment. The interest for five years shall also be payable on the amount awarded by the Claims Tribunal.

14. The Respondent DDA being the owner of the offending vehicle is directed to deposit the enhanced amount of compensation and the interest as stated above in the name of the Appellant within six weeks with the Claims Tribunal.
15. The Appellant is already in advanced age. 50% of the compensation awarded shall be released to her. Rest 50% shall be held in fixed deposit for a period of two years.
16. The Appeal is allowed in above terms.
17. Pending Applications stand disposed of.

**FAO.261/2000**

18. The Appellant in this Appeal suffered multiple fractures of both bones of his left leg, a fracture in his right hand and fracture in his chest and jaw. He remained an indoor patient from 15.05.1983 to 25.05.1983 in Tirath Ram Hospital. He remained in plaster for a period of three months. The Claims Tribunal awarded a compensation of ₹35,000/- which is tabulated hereunder:

| <b>Sl. No.</b> | <b>Compensation under various heads</b> | <b>Awarded by the Claims Tribunal</b> |
|----------------|-----------------------------------------|---------------------------------------|
| 1.             | Cost of Treatment/ Purchase of Medicine | ₹10,000/-                             |
| 2.             | Conveyance Charges                      | ₹ 2,500/-                             |
| 3.             | Special Diet                            | ₹ 2,500/-                             |
| 4.             | Pain & Suffering                        | ₹ 10,000/-                            |
| 5.             | Loss of Income                          | ₹ 10,000/-                            |
|                | <b>Total</b>                            | <b>₹ 35,000/-</b>                     |

19. Admittedly, the Appellant did not suffer any permanent disability. The Appellant was able to prove bills worth ₹9,126/- as an indoor patient. He was awarded a compensation of ₹10,000/- towards the treatment. In his examination as PW10, the Appellant claimed his income to be ₹2,000/- per month. No satisfactory evidence was led, but the said income was not challenged in cross-examination. The Appellant must have taken about six months to recover from the injuries. The compensation of ₹10,000/- towards pain and suffering, ₹10,000/- towards loss of income and ₹2,500/- each towards conveyance charges and special diet seems to be just and reasonable.
20. For the reasons stated earlier, the Appellant ought to have been paid interest @ 7.5% per annum for a period of five years upto the date of the impugned judgment and then from the filing of the Appeal till its payment. The deficiency in interest shall be made up within six weeks and deposited in the name of the Appellant with the Claims Tribunal. The amount shall be released in favour of the Appellant on deposit.
21. The Appeal is allowed in above terms.
22. Pending Applications stand disposed of.

**(G.P. MITTAL)**  
**JUDGE**

**SEPTEMBER 10, 2012**

pst