

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

Decided on: 13th March, 2012

+ **FAO 308/2000**

VIJAY KUMAR Appellant

Through: Mr.Sunil Aggarwal, Advocate

versus

LAL CHAND MEENA & ORS Respondent

Through: Mr.S.L.Gupta and Mr. Ram
Ashray, Advocates for R-3.

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 Rs.1,66,200/- awarded by the Tribunal in favour of the Appellant for having suffered grievous injuries in a motor accident which occurred on 30.04.1996. The compensation awarded under various heads is extracted hereunder:-

<i>“1. Exps. on a/c of treatment/ Purchase of medicine</i>		<i>₹65,000/-</i>
<i>2. Exps. on a/c of charges of conveyance</i>		<i>₹10,000/-</i>
<i>3. Exps. on a/c of special diet</i>		<i>₹10,000/-</i>
<i>4. Exps. on a/c of Attendant charges</i>		<i>₹1,200/-</i>

5. Exps. on a/c of pain & agony	₹ 10,000/-
6. Exps. on a/c of permanent disability	₹ 50,000/-
7. Exps. on a/c of loss of income	₹ 20,000/-
Total	<u>₹ 1,66,200/-</u>

2. It is urged by the learned counsel for the Appellant that at the time of the accident the deceased was earning Rs.4500/- per month but he has not been granted adequate compensation on account of loss of earning capacity. The compensation of Rs.10,000/- awarded on account of pain and agony is very low. Although the Appellant claimed his income from salary to be Rs.4500/- per month but a perusal of the Income Tax Return for the assessment year 1996-97 shows that the Appellant had an income of just Rs.25,700/- from the salary i.e. just about Rs.2000/- per month.
3. In *Raj Kumar v. Ajay Kumar & Anr., 2011 (1) SCC 343*, the Supreme Court considered in great detail the co-relation between the physical disability suffered in an accident and the loss of earning capacity resulting from it. The relevant portion of the report is extracted hereunder :-

“10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of

economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

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 ability (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 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 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."

4. In this case although the Appellant deposed that he was unable to carry on the service after suffering injuries yet the Appellant failed to adduce any medical evidence to show that his earning capacity was materially affected on account of the injuries suffered by him. The disability certificate Ex.PW-2/A show that the Appellant suffered a crush injury in his left ankle and foot resulting into 40% disability in respect of left lower limb. Although the Appellant would always have difficulty in walking and running but, in the absence of any evidence produced by the Appellant to show as to the nature of his job and how much his earning capacity was affected, I would not interfere with the lump sum compensation of Rs.50,000/-

granted under this head. However, I would award a compensation of Rs.25,000/- on account of loss of amenities in addition to the permanent disability (considering that the accident took place in the year 1996).

5. It is difficult to measure the pain and suffering in terms of money which has been suffered by the claimant on account of serious injuries caused to him in a motor accident. Since the compensation is required to be paid for pain and suffering an attempt must be made to award compensation which may have some objective relation with the pain and suffering underwent by the victim of a motor accident. For this purpose, the Claims Tribunal and the Courts normally consider the nature of injury; the parts of the body where the injuries were sustained; surgeries (if any) underwent by the victim; confinement in the hospital and the duration of the treatment. It is proved on record that immediately after the accident the Appellant was removed to DDU Hospital, he was then shifted to M/s Chanan Devi Memorial Hospital, Janak Puri where he remain admitted for 15 days. An operation was performed in the hospital which was not successful as the skin grafting failed. The Appellant was re-admitted in North Delhi Nursing Home, Ashok Vihar w.e.f. 03.06.1996 to 16.06.1996. Two operations were performed and skin grafting was done afresh. Thus an award of compensation of Rs.10,000/- on account of pain and suffering even from the standard of year 1996 was very low. This

amount needs to be enhanced from Rs.10,000/- to Rs.25,000/-.

6. The overall compensation is enhanced by Rs.40,000/- which shall carry interest @ 12% per annum from the date of filing of the petition till the date of award as granted by the Tribunal. The enhanced compensation shall further carry interest @ 7.5% per annum from the date of the award i.e 03.04.2000 till 30.11.2009 as the interest rates had considerably fallen during this period. Since the interest rates started firming up in the year 2009, the Appellant would be entitled to interest @ 9% per annum from 01.01.2010 up to the date of deposit.
7. Respondent No.3 is directed to deposit the enhanced compensation along with interest within a period of 30 days failing which it shall carry interest @ 12% per annum from the date of this order till the date of the payment.

(G.P. MITTAL)
JUDGE

MARCH 13, 2012
mr