

\$~R-12

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

Date of decision: 12th March, 2012

+ **FAO. No.366/2000**

GAYATRI NATH SRIVASTAVA Appellant

Through: Mr. K. N. Kataria, Sr. Advocate
with Mr. K.P. Mavi &
Ms. Soniya Singhani, Advocates

versus

NAZIR HUSSAIN & ANR. Respondents

Through: None.

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 ₹36,000/- awarded to the Appellant for having suffered injuries in an accident which occurred on 25.06.1992. The compensation awarded can be tabulated hereunder:

S.No.	Head of Compensation	Granted by the Claims Tribunal
1.	Loss of Pain, Suffering and Immobility	₹15,000/-
2.	Loss of Amenities of Life	₹15,000/-
3.	For Medicines	₹3,000/-
4.	Special Diet & Conveyance	₹3,000/-
	Total	₹36,000/-

2. The Appellant suffered crush injury on his left hand resulting in *'deformity and weakness with partial radial nerve injury left'*. He was issued a disability certificate Ex.PW5/A showing 25% permanent disability (in respect of his left hand).
3. During inquiry before the Claims Tribunal, the Appellant examined five witnesses including himself. The Appellant as PW5 deposed about the injuries suffered by him, and the duration of his treatment. Relevant portion of his examination-in-chief is extracted hereunder:

"...I remained admitted in Walia Nursing Home from 25-6-92 to 28-6-92. I was shifted to Sr. Ganga Ram Hospital for surgery. I was discharged from Sr. Ganga Ram Hospital on 4-7-92. I was operated upon. 2 steel plates were inserted in my left hand. I remained under treatment of Dr. S.P. Mandal, a pvt. Practitioner. My treatment continued for 5 months. I was also given treatment by physiotherapist. I had consulted 3/4 doctors of Dr. Narinder Mohan Hospital, Mohan Nagar, Ghaziabad. I cannot ride 2 wheeler scooter because of condition of my fingers of left hand. Fingers have become stiff and cannot move smoothly. Though I drive car but is has to be done with a great difficulty. Being a member of middle class family and unable to drive scooter, my expenses have increased manifold.

I have suffered permanent disability to the tune of 25%. I have brought original disability certificate, photo stat copy of which is Ex.PW5/A. (Original certificate seen and returned).

In 1996 I got these plates removed from my left hand.

I started my job career from 1983. I got employment in U.P. Govt. I remained there for 3 yrs. I had joined as Asstt. Accountant. In 1986, I resigned from that job and joined a pvt. Service in India Glycols Ltd., N.Delhi. There initially I was getting ₹1850/- pm. I left that service in 1992. In 1992, I joined Era Construction India Pvt. Ltd. Then I had left India Glycols. My salary was ₹5400/- pm. In Era Construction India Ltd., I was given initial salary of ₹8400/- pm. In India Glycols, I was given promotion almost every year because of my performance. Within 4 months of my joining Era Construction India Pvt. Ltd. I had met with this accident. That was the beginning of my down fall so far as my earning and job career is concerned. In Era Construction Co. where I remained for 6 yrs. i.e. upto Aug. 1998, I was given only one promotion. Nature of my job was such that I was required to inspect sites all over India. Because of the injuries, that particular job was affected. Keeping in view my immobility, management of Era Construction India had started withdrawing work and putting restrictions on my site inspections and ultimately in Aug. 1998, Company management had asked to leave the job. At present I sit in the office of my brother and so some work. At present I am getting ₹3000/- pm. I am spending from the past savings.

I have brought the original papers of my appointment in UP Govt., in India Glycols and in Era Construction India. Photostat copies of those documents are Ex.PW5/B to I. (Original seen and returned). (objected to).

I have not recovered as yet and during rainy season, I get pain in my left hand.....”

4. PW3 Dr. S.P. Mandal and PW4 Raj Sharma, are the other important witnesses examined by the Appellant. PW3 deposed

that he had issued a certificate Ex.PW3/A dated 28.10.92 to the (injured) giving him fitness for resuming his duties with effect from 29.10.1992. In cross-examination, PW3 deposed that 25% of disability in respect of the limb would mean 25% less functional than that of a normal limb. He deposed that the injured's earning capacity will be affected depending on the job undertaken by him. The Doctor admitted that he did not mention that the injured's earning capacity will be affected by the disability.

5. PW4 Raj Sharma was Sr. Manager, HRD in Era Construction India Ltd. where the Appellant was employed at the time of the accident. This witness deposed that during the period of six years after the accident, the Appellant was given only one promotion. He gave an opinion that if he (injured) not suffered the injury, he would have got three promotions.
6. In *Raj Kumar V. Ajay Kumar & Anr., 2011 (1) SCC 343*, the Supreme Court observed that the compensation awarded should fully and adequately restore the Claimant to the same position as he was in, prior to the accident. The Supreme Court laid down the heads under which a compensation could be awarded in injury cases. It was observed that in cases of permanent disability, some evidence is to be produced to show that it resulted in loss of earning capacity. It was held that even in very serious injuries, there may not be any effect on the loss of

earning capacity. Paras 5, 6, 10, 11 and 13 of the report are extracted hereunder:

“5. The provision of the Motor Vehicles Act, 1988 ('the Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. [See C.K. Subramonia Iyer v. T. Kunhikuttan Nair, AIR 1970 SC 376, R.D. Hattangadi v. Pest Control (India) (P) Ltd., 1995 (1) SCC 551 and Baker v. Willoughby, 1970 AC 467.

6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

X X X X X X X X

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.

11. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. 2010 (10) SCC 254 and Yadava Kumar v. D.M., National Insurance Co. Ltd. 2010 (10) SCC 341.

X X X X X X X X

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.

REIMBURSEMENT OF MEDICAL EXPENSES:

7. It is urged by the learned counsel for the Appellant the Appellant's testimony that he spent ₹70,000/- on his treatment was not challenged in cross-examination. Thus, even if the Appellant failed to produce the bills on record, he should have been awarded the compensation of ₹70,000/- under that head.
8. The Claims Tribunal noticed that two bills, mark 'A' and 'B' were produced on record, which are for ₹19,881/- and 5,275/- respectively. I have already extracted above the Appellant's

testimony which shows that he was under treatment as a outdoor patient for a long period. The certificate Ex.PW3/A, proved by PW3 Dr. S.P. Mandal, also shows the duration of the Appellant's treatment. In the circumstances, it can be assumed that during this period of five months, a sum of ₹15,000/- must have been spent by the Appellant. In the absence of production of all the bills, I would restrict the Appellant's claim for reimbursement of the amount spent on treatment and purchase of medicines to ₹40,000/- as against ₹3,000/- awarded by the Claims Tribunal.

PAIN & SUFFERING:

9. Immediately after the accident on 25.06.1992, the Appellant was admitted in Walia Nursing Home. He was shifted to Sir Ganga Ram Hospital on 26.08.1992. He remained admitted there till 04.07.1992. He was operated upon and two steel plates were inserted in his left arm. His testimony that he remained under treatment for five months under Dr. S.P. Mandal, a private practioner and then got treated by a Physiotherapist in Dr. Narinder Mohan Hospital, Mohan Nagar was also not challenged. The Appellant deposed that he was still having pain during rainy season in his left hand.
10. 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.

11. Considering the duration of the treatment, the services undertaken by the Appellant, the compensation of ₹15,000/- was wholly inadequate. I would enhance the same to ₹30,000/-

LOSS OF AMENITIES AND LOSS OF EARNING CAPACITY:

12. The Appellant deposed that he used to drive a two-wheeler scooter; due to the accident the condition of his left hand fingers have become stiff and cannot move smoothly. Although, the Appellant produced PW3 Dr. S.P. Mandal, he (Dr. S.P. Mandal) was completely silent as to whether the Appellant would be able to drive a two-wheeler. The Appellant deposed that he got only one promotion during the period of six years after the accident and because of the nature of his job, he would require to inspect sites all over India. On account of the injuries suffered by him, his job was affected, as his employer started withdrawing work from him. He deposed that the management asked him to leave the job. He, therefore, left the job and started working with his

brother on a salary of just ₹3,000/-. PW4 Raj Sharma from the Appellant's employer merely opined that the deceased's promotion was affected. At the same time, it goes without saying that the Appellant's mobility on account of radial fracture in his left forearm and insertion of steel plates to unite the bones would certainly affect his mobility.

13. The Appellant did not produce any expert evidence to show the extent to which his earning capacity was affected. Rather, as per his own statement he continued in the same job and also earned one promotion during six years he worked with the same employer. In view of the judgment in *Raj Kumar v. Ajay Kumar & Anr.(supra)*, it would be difficult to hold that his earning capacity was materially affected. In the circumstances, I would enhance the compensation of ₹15,000/- towards loss of amenities to ₹50,000/- towards loss of amenities, inconvenience and discomfort.

LOSS OF SALARY:

14. PW3 Dr. S.P. Mandal deposed that the Appellant was unable to attend to his work from the date of the accident i.e. 25.06.1992 to 28.10.1992. Relying on the same, I award a compensation of ₹35,000/- towards loss of income loss of leave for four months service @ ₹8,400/- per month as deposed by the Appellant and PW4.

ATTENDANT CHARGES, SPECIAL DIET & CONVEYANCE:

15. Considering the period of hospitalization, nature of injuries and the duration of treatment, the Appellant would have needed an attendant for a period of four months. Even if no attendant was engaged and a family member did the job, the Appellant would be entitled to compensation (*D.T.C v. Lalita AIR 1981 Delhi 558*). I award a compensation of ₹5,000/- @ ₹1250/- per month. The compensation under the heads of special diet and conveyance also needs to be raised to ₹5,000/- each.

16. The compensation is recomputed as under:

<i>Medical Expenses</i>	₹40,000/-
<i>Pain and Suffering</i>	₹30,000/-
<i>Loss of Amenities & Loss of Earning Capacity</i>	₹50,000/-
<i>Loss of Salary</i>	₹35,000/-
<i>Attendant Charges</i>	₹5,000/-
<i>Special Diet</i>	₹5,000/-
<i>Conveyance</i>	₹5,000/-
Total	₹1,70,000/-

17. The Claims Tribunal awarded interest @ 12% per annum only for the period of four years on the ground that the Appellant also contributed to the delay in disposal of the Claim Petition. I have perused the record. There is no such negligence as to deprive the Appellant of his right to get the interest. I would award interest @ 12% from the date of filing of the Petition till the date of the award i.e. 03.05.2000; I further award interest @

7.5% per annum from 04.05.2000 till 31.12.2009 as the rate of interest had fallen during this time. The interest rate had started firming up during the period 2009-10. The present rate of interest on long term deposit in a nationalized bank is about 9%. In the circumstances, the Appellant would be entitled to interest @ 9% per annum w.e.f. 01.01.2010 till the date of the payment. The Respondent No.1 being the driver of the offending vehicle is liable to pay the compensation as the principal tortfeasor and the Respondent No.2 is vicariously liable being the Respondent's master and employer. The Respondent No.3 insurer of the vehicle is under obligation to indemnify the Second Respondent. In the circumstances, the Respondent No.3 is directed to deposit the enhanced compensation of ₹1,34,000/- along with up to date interest within 30 days, with the Registrar General of this Court. Since this accident took place almost 20 years back and the Appellant belongs to middle income group, who was earlier in Government service and later started working in private sector at responsible position, the amount of compensation along with interest shall be released in favour of the Appellant immediately on deposit.

18. The Appeal is allowed in above terms.

(G.P. MITTAL)
JUDGE

MARCH 12, 2012

pst