

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

Reserved on: 23rd July, 2012
Pronounced on: 30th July, 2012

+ **FAO 64/2002**

SURAJ VERMA

..... Appellant

Through: Mr. Kailash Pandey Advocate
Ms. Pooja Marwaha, Advocate
Mr. Ranjeet Singh, Advocate

versus

SANGEETA CHHABRA & ORS Respondents

Through: Mr. Pankaj Seth, Advocate for the
Respondent No.3.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appellant impugns a judgment dated 04.09.2001 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹29,39,000/- was awarded in favour of Suraj Prakash Verma for having suffered injuries in an accident which occurred on 09.09.1996.
2. On 09.09.1996 at about 7:00 A.M., the Appellant was standing outside his house No.A-37, Chander Nagar, Janakpuri. Respondent No.3 Ved Ram while driving tempo No.HR-47-4342 in a rash and negligent manner hit an electric pole as a result of which the pole broke down and fell on the Appellant's head. He suffered head injury, partial avulsion and compound fracture of both bones of his right leg. He lost consciousness. The Appellant was immediately removed to Madan Nursing Home. After giving him first aid, he was taken to Sir Ganga Ram Hospital. For want

of room, the Appellant was taken to Kolmet Hospital. After conducting MRI scan, the Appellant was referred to Apollo Hospital for further treatment and management. The Appellant underwent three successive surgeries in the Apollo Hospital including one for a head injury. On account of the head injury, there was scalp laceration and partial avulsion, post traumatic complete dislocation and cord transection of C6 over C7. As per the disability certificate Ex.PW-1/1 issued by the Medical Board, Safdarjung Hospital the Appellant was opined to be a case of *post traumatic quadriplegia C6-7 (operated) without recovery with bladder and bowel involvement*. He was declared to be 100% disabled with respect to the whole body.

3. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of tempo No.HR-47-4342 by the third Respondent. This finding is not disputed by the Insurance Company.
4. The Appellant claimed a compensation of ₹66,60,000/-. The Claims Tribunal went into the details of the expenditure stated to have been incurred and the loss suffered by the Appellant and awarded a compensation of ₹29,39,000/-, which is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Expenses on a/c of Medical Treatment/Purchase of Medicines	₹5,70,000/-
2.	Expenses on a/c of Conveyance Charges	₹ 5,000/-
3.	Compensation on a/c of Attendant Charges	₹ 10,000/-

4.	Compensation on a/c of Mental Torture, Pain & Suffering	₹ 50,000/-
5.	Compensation on a/c of Permanent Disability and Loss of Future Income	₹ 23,04,000/-
	Total	₹ 29,39,000/-

5. The following contentions are raised on behalf of the Appellant:-

- (i) The Claims Tribunal erred in disbelieving some of the bills proved towards the amount spent on conveyance and medical treatment.
- (ii) The compensation awarded towards Conveyance and Attendant charges is very low.
- (iii) The compensation awarded towards pain and suffering is very low considering the fact that on account of paralysis, the Appellant would be confined to bed.
- (iv) The Appellant's income should have been taken as ₹25,000/- per month and a multiplier of '18' should have been applied to compute the loss of future earning capacity.

6. On the other hand, it is urged on behalf of the Insurance Company that the compensation awarded is on the higher side. It also preferred an Appeal *FAO No.560/2001 titled 'Oriental Insurance Company Ltd. v. Suraj Prakash Verma & Ors.'* against the quantum of compensation. The same was not entertained on the basis of *National Insurance Co. Ltd., Chandigarh v. Nicolletta Rohtagi and Ors., (2002) 7 SCC 456*, which held the field at that time. It is stated that there is no scope for any enhancement in the overall compensation of ₹29,39,000/-.

7. Section 168 of the Motor Vehicles Act, 1988 (the M.V. Act) enjoins the Claims Tribunal to award compensation which should be just and reasonable. In *General Manager, Kerala Road Transport Corporation, Trivandrum v. Susamma Thomas & Ors.*, (1994) 2 SCC 176, 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.”

8. In *Virender Singh v. Anand Prakash & Ors.*, 2008 ACJ 2519, the learned Single Judge of this Court dealt with the case of an Army personnel (a Sepoy in the Indian Army) who suffered 100% permanent disability on account of paralysis of his body. It was held that in personal injury cases the Court should award a compensation which will put the injured in the position as he would have been if he had not sustained the injury. Paras 12 to 18 and 29 to 31 of the report are extracted hereunder:-

“12. Tribunals constituted under the Act are required to make an award of compensation which has to be just. The Courts and Tribunals have a duty to weigh the various factors and quantify the compensation, which should be just. What would be a just compensation is a vexed question. Every method or mode adopted for assessing compensation has to be considered in the background of just compensation which is the pivotal consideration. The determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression just denotes equitability, fairness and reasonableness and non-arbitrary.

13. *Compensation for loss of limb or life can hardly be weighed in golden scales. There can be no golden rule applicable to all the cases for measuring the value of human life or a limb. The measure of damages cannot be arrived at by a precise mathematical calculations. It would depend upon the particular facts and circumstances and attending peculiar or special features, if any. The quantum of damages fixed should be in accordance to the injury.*

14. *The thumb rule which govern the assessment of damages in personal injury cases is that the Court should award to an injured person such a sum as will put him in the position as he would have been in if he had not sustained the injuries.*

15. *In the light of afore-noted judicial position and backdrop facts, I shall assess the compensation to be awarded to the injured.*

16. *Broadly speaking, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and nonpecuniary damages.*

17. *Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money. Pecuniary damages are easy to determine as a Tribunal would have some imperical data before it.*

18. *Pecuniary damages includes the following:-*

- (i) Special damages or pre-trial pecuniary loss.*
- (ii) Prospective loss of earnings and profits.*
- (iii) Medicinal expenses.*
- (iv) Cost of future care and other expenses.*

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29. *Unlike pecuniary damages, non-pecuniary damages are incapable of being assessed by arithmetical calculations.*

30. *Non pecuniary damages includes the following:-*

- (i) Pain and suffering.*
- (ii) Damages for mental and physical shock.*
- (iii) Loss of amenities of life which may include a variety of matters i.e. on account of injury the injured may not be able to walk, run or sit etc.*
- (iv) Loss of expectation of life i.e. on account of injury normal longevity of the life of the person concerned is shortened.*
- (v) Disfigurement.*
- (vi) Discomfort or inconvenience, hardship, disappointment, frustration and mental stress in life.*

31. Pain and suffering:- Pain and suffering compensates victim for the physical and mental discomfort caused by the injury. Pain is physical; suffering is emotional. While pain is the physiological response to certain stimuli, suffering is psychological or emotional response to pain.”

9. In a recent judgment of the Supreme Court in *Raj Kumar v. Ajay Kumar & Anr., 2011 (1) SCC 343*, the Supreme Court emphasized that wherever compensation is awarded by treating the loss of future earning capacity as 100%, the need to award compensation separately under the head of loss of amenities or loss of expectations of life may disappear and, therefore, in such cases, a nominal amount should be awarded under the head of loss of amenities and loss of expectations of life as otherwise there may be a duplication in the award of compensation.

10. Let me now turn to the facts of the present case.

EXPENSES TOWARDS MEDICAL TREATMENT

11. The Appellant was awarded a compensation of ₹5,70,000/- towards the amount spent on medical treatment as against his claim of ₹12,10,108/- as it had rejected a number of bills. In his examination as PW-1, the

Appellant proved the bills Ex.P-1 to P-236. The authors of the bills were not examined. The Claims Tribunal scrutinized each and every bill issued by the hospital towards treatment, bills for purchase of medicines, physiotherapy, dressing, etc. etc. After scrutinizing all the bills, the Claims Tribunal awarded a compensation of ₹5,70,000/-. The bills which did not contain the name of the Appellant were rejected as being doubtful. I have gone through the bills Ex.P-1/258 to P-1/262. These bills are issued by the Rajiv Gandhi Cancer Institute & Research Centre; a renowned hospital. The bills show that the Appellant consulted Dr. Hukku S. and received the treatment “linear accelerator radical treatment without CT and brachytherapy”. The bills Ex.P-1/259 and Ex.P-1/262 are of ₹250/- each towards consultation charges paid to Dr. Hukku S., whereas the rest of the bills are for the treatment received there. It is important to note that this treatment was received in the year 2002 whereas this accident took place in the year 1996. The age of the patient mentioned here is 38 years and the sex mentioned is ‘Female’. The Appellant as per his date of birth was 42 years on the date of the accident. Thus, he would have been approximately 48 years during the time he received treatment in Rajiv Gandhi Cancer Institute. There could have been a mistake in mentioning the sex of the patient in just one of the bills, but this mistake of mentioning the wrong Age and Sex repeatedly in all the five bills cannot be said to be on account of a clerical error. Moreover, this clerical error would have been noticed by the Appellant or by some of his family members, when they would have gone for the consultation/treatment on subsequent occasions and the same would have been rectified. On top of it, the treatment “brachytherapy” is an internal radiotherapy for the purpose of the treatment of cancer. Similarly, linear

accelerator is a device commonly used for external beam radiation treatment for a cancer patient. As it is not the Appellant's case that he suffered cancer on account of the injuries sustained in the accident. Thus, the Claims Tribunal rightly rejected the bills which could not be related to the Appellant.

12. Most of the bills i.e bill Ex.P-169 for ₹5630/- issued by the Kolmet Hospital on the date of the accident; and various other bills issued by the Apollo Hospital such as bill Ex.P-171 for ₹28,047/- issued to the Appellant on the date of his admission, i.e. on 09.09.1996; bill Ex.P-175 for ₹21,405/- issued on 16.09.1996; bill Ex.P-176 for ₹17,973/- issued on 19.09.1996; bill Ex.P-179 for ₹1,12,381/- issued on 25.09.1996; bill Ex.P-182 for ₹19,922/- issued on 29.09.1996; bill Ex.P-185 for ₹13,402/- issued on 03.10.1996; bill Ex.P-188 for ₹75,106/- issued on 09.10.1996; bill Ex.P-189 for ₹16,419/- issued on 10.10.1996; bill Ex.P-192 for ₹22,556/- issued on 16.10.1996; bill Ex.P-196 for ₹16,831/- issued on 25.10.1996, were some of the major bills which were in respect of MRI, purchase of medicines, purchase of bed with railing, etc. etc. The compensation of ₹5,70,000/- towards treatment and physiotherapy, purchase of medicines, etc. etc. was rightly allowed by the Claims Tribunal. Since the authors of the bills were not produced, the bills which were of a doubtful nature were rightly discarded by the Claims Tribunal. No interference is called for in the award of the compensation of ₹5,70,000/- towards the amount spent on treatment.

ATTENDANT CHARGES

13. As per the Disability Certificate Ex.PW-1/1, the Appellant is a case of *post traumatic quadriplegia C6-7 (operated) without recovery with*

bladder and bowel involvement. As stated earlier, he was declared as a case of 100% permanent disability in respect of his whole body. The Appellant deposed that he had engaged two persons permanently for looking after him round the clock. The Claims Tribunal awarded lumpsum compensation of ₹10,000/- towards the Attendant charges.

14. Considering the nature of injuries, the Appellant did require services of an attendant. The minimum wages of a semi-skilled worker on the date of the accident were ₹1843/-, applying the multiplier of '14' appropriate to the Appellant's age (42 years) he is entitled to a compensation of ₹3,09,624/- (1843/- x 12 x 14) as against an award of ₹10,000/- made by the Claims Tribunal.

LOSS OF EARNING CAPACITY

15. The Appellant's testimony that he was a Class-A Govt. Contractor was not challenged in cross-examination. The Appellant proved his Registration Certificate as a Contractor as Ex.PW-1/9. He proved the Income Tax Return (ITR) for the financial year 1995-96 whereby an income of ₹ 1,40,000/- was returned and tax of ₹17,000/- was paid.
16. It is urged on behalf of the Insurance Company that the Appellant's age in the Claim Petition was stated to be 48 years whereby the loss of earning capacity was awarded on the age of 42 years. It is contended that the compensation awarded towards loss of earning capacity is excessive. A copy of the Appellant's passport was proved as Ex.PW-1/8 which shows his date of birth as 15.03.1953. Thus, he was aged 42 years on the date of the accident and was settled in the profession of a Govt. Contractor.

17. It is contended by the learned counsel for the Appellant that his income would have increased manifold with the passage of time and, therefore, he should be awarded compensation by taking his potential income to be at least ₹25,000/- per month.
18. As stated earlier, he was paying good amount of income tax. In the circumstances, the Appellant was entitled to an addition of 30% towards the future prospects/inflation following the principles laid down in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, *Santosh Devi v. National Insurance Co. Ltd. & Ors.*, 2012 (4) SCALE 559 and a judgment of this Court in *Santosh Khandelwal & Ors. v. Abbas & Ors.*, MAC APP.31/2010 decided on 16.03.2012. The Appellant suffered 100% disability with respect to his whole body on account of post traumatic quadriplegia with bladder and bowel involvement. He was therefore entitled to full loss of earning capacity. The compensation towards loss of future earning capacity comes to ₹22,38,600/- (1,40,000/- - 17,000/- (income tax) + 30% x 14) as against an award of ₹23,04,000/-. The compensation of ₹23,04,000/- awarded by the Claims Tribunal is, therefore, reduced to ₹22,38,600/-. Although the Cross-Appeal filed by the Respondent was dismissed but the Respondent can support the judgment without any Cross-Appeal and say whether the overall compensation is just and reasonable. (*Shri Ravinder Kumar Sharma v. The State of Assam and Ors.*, AIR 1999 SC 3571 and *Jayakodi & Ors. v. Branch Manager, NIC & Anr.*, Civil Appeal No.401/2008 (arising out of SLP (Civil) No.13746/2004 decided on 11.01.2008).

PAIN AND SUFFERING

19. The Appellant suffered head injury apart from fracture of both bones of his right leg. As stated above, the Appellant on account of injuries suffered became quadriplegic without any chances of recovery. His bladder and bowel movement were also involved in the quadriplegia forcing him to be confined to bed. Thus, the Appellant suffered pain not only on account of the injuries suffered in the accident, but also due to the long duration of the hospitalization, successive surgeries and a very long treatment. He would suffer pain and mental torture throughout his life.
20. In *R.D. Hattangadi v. M/s. Pest Control (India) Pvt. Ltd. & Ors. (1995) 1 SCR 75* where the accident occurred in the year 1980, the Claimant became paraplegic with 100% permanent disability and a compensation of ₹1,50,000/- was awarded towards pain and suffering.
21. In the case of *Virender Singh (supra)* a compensation of ₹1,50,000/- was awarded as the Claimant suffered paralysis of the left side of his body with 100% permanent disability.
22. Following *R.D. Hattangadi (supra)* and *Virender Singh (supra)* I would make a provision of ₹1,50,000/- towards the pain and suffering and mental torture as against an award of ₹50,000/- awarded by the Claims Tribunal.

CONVEYANCE

23. The Appellant placed on record bills Ex.P-260 to P-275, Ex.P-292 to P-294 and Ex.P-303 to P-310 for engaging taxi services. The bills though pertained to different periods are in chronological order. In the bill Ex.P-292 and P-294 there is different handwriting on different parts of the bills. Certain columns like Opening Meter and Closing Meter were left

blank. The owner of the taxi service was not summoned to prove the bills. In the circumstances, the bills totaling ₹25,000/- cannot be believed.

24. But, at the same time, it cannot be lost sight that the Appellant was a case of *post traumatic quadriplegia* and could travel only with the assistant once of an Attendant either in a taxi or in a TSR. The compensation of ₹5,000/- awarded towards the conveyance charges appears to be on the lower side. The same is enhanced to ₹15,000/-.

LOSS OF AMENITIES IN LIFE

25. In this case, the Appellant has been awarded compensation of ₹22,38,600/- towards loss of future earning capacity, taking him to be permanently disabled to the extent of 100%. In view of the law laid down in *Raj Kumar v. Ajay Kumar & Anr., 2011 (1) SCC 343*, the award of compensation towards loss of amenities has to be nominal, otherwise, there would be a duplication in the award of compensation. The Claims Tribunal has not awarded any compensation under this head. I would make a provision of a nominal sum of ₹10,000/- under the head of loss of amenities in life.

26. The compensation awarded is re-computed as under:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by the this Court
1.	Expenses on a/c of Medical Treatment/Purchase of Medicines	₹5,70,000/-	₹5,70,000/-
2.	Expenses on a/c of Conveyance	₹ 5,000/-	₹15,000/-

	Charges		
3.	Compensation on a/c of Attendant Charges	₹ 10,000/-	₹3,09,624/-
4.	Compensation on a/c of Mental Torture, Pain & Suffering	₹ 50,000/-	₹1,50,000/-
5.	Compensation on a/c of Permanent Disability and Loss of Future Income	₹ 23,04,000/-	₹22,38,600/-
6.	Loss of Amenities in Life	--	₹10,000/-
	Total	₹ 29,39,000/-	₹ 32,93,224/-

27. The overall compensation is thus enhanced from ₹29,39,000/- to ₹32,93,224/-.

28. It is urged by the learned counsel for the Appellant that the award of interest @ 6% was very low. Rate of interest were in double digits in 1980's and 1990's. The interest rate started falling at the beginning of this century. They started rising and firming up since 2007. It is reasonable to award interest @ 7.5% per annum in the present case.

29. In the facts and circumstances, the award of interest is raised from 6% per annum to 7.5% per annum from the date of filing of the Claim Petition till its payment.

30. The enhanced compensation of ₹3,54,224/- shall also carry interest @ 7.5% per annum.

31. The Insurance Company is directed to deposit the enhanced compensation along with upto date interest with UCO Bank, Delhi High Court, New Delhi in the name of the Appellant within eight weeks.

32. The compensation already deposited shall be released in favour of the Appellant in terms of the order passed by the Claims Tribunal.
33. 60% of the enhanced compensation along with proportionate interest shall be held in fixed deposit for a period of two years, four years, six years and eight years in equal proportion.
34. 40% of the enhanced compensation along with proportionate interest shall be released to the Appellant immediately.
35. The statutory amount of ₹25,000/- shall be refunded to the Insurance Company.
36. The Appeal is allowed in above terms.
37. All pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

JULY 30, 2012
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