

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

Decided on: 6th March, 2012

+ **FAO 344/2001**

MOHD. RAFIQ Appellant
Through: Mr. Kundan Kumar Lal,
Advocate for Mr. A.K. Pramod,
Advocate.

versus

SATBIR SINGH & ORS. Respondents
Through: Mr. Shashank Sharma,
Advocate for Mr. Pradeep Gaur,
Advocate.

CORAM:

HON'BLE MR. JUSTICE G.P. MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant seeks enhancement of compensation of Rs.45,000/- awarded for having suffered multiple fractures in the right leg bone and injuries on various other parts of the body resulting into permanent disability to the extent of 40%, in an accident which occurred on 18.9.1992. There were shortening of left lower limb by an inch. The Appellant claimed a compensation of Rs.5,90,000/-. The Claims Tribunal by the impugned order awarded a lump sum compensation of Rs.15,000/- towards treatment, conveyance, special diet, pain and suffering and a sum

of Rs.30,000/- towards permanent disability.

2. It is urged by learned counsel for the Appellant that the compensation awarded is too low and niggardly.

3. There is no appeal by the owner, the driver and the insurance company. Therefore, I am not to go into the finding of negligence reached by the Claims Tribunal.

4. During evidence before the Claims Tribunal the Appellant examined PW-1 Sanjay Kumar, Record Clerk, Deen Dayal Upadhyay Hospital who proved the Appellant's MLC as Ex. PW1/1; PW2 HC Jay Bhagwan who proved the FIR Ex. PW2/1. The Appellant himself entered the witness box as PW-3. On the injuries suffered by him, he deposed that he was picked up by some person after the accident and was removed to DDU Hospital. He testified that he suffered compound fracture of both bones left leg and suffered multiple injuries on both of his hands. He was operated upon in DDU Hospital after 10 days of the accident and a nail was inserted which was still there in his leg. He was discharged from the Hospital in the month of October 1992 with direction to attend OPD from time to time. He was not satisfied with the treatment received by him in DDU Hospital and started treatment in LNJP Hospital. Due to complications, he was readmitted in LNJP Hospital. He underwent three operations and remained

an indoor patient for 22 days. He deposed that he visited LNJP Hospital as an OPD patient 40 times and spent Rs.200 on conveyance on every visit. The doctor advised him to have some special diet. He spent Rs.50/- per day on his special diet. He proved the treatment papers as Ex.PW3/2 to PW3/16. He deposed that he was earning Rs.100 to Rs.150 per day by doing the job of a 'rickshaw puller.'

4. The Appellant's testimony remained unchallenged and unrebutted as the Respondents No. 1 and 2 were ordered to be proceeded ex parte and although the Respondent No.3 (the insurance company) filed a written statement on 26.2.1997. Yet, none appeared on behalf of the insurance company on 8.1.1998, 15.7.1998, 24.2.1998, 21.7.1999. On the basis of the documents placed on record, it is established that the Appellant was an indoor patient in two hospitals for about one month and 22 days and an outdoor patient for more than a year.

5. In *Raj Kumar v. Ajay Kumar & Anr*, 2011(1) SCC 343, the Supreme Court held that the compensation awarded in case of injury should to the extent possible adequately restored to the Claimant to the position prior to the accident. The Supreme Court considered in great detail the co-relation between physical disability suffered in an accident and the loss of earning capacity resulting from it. 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.

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.

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 disability (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.”

5. The Appellant deposed that after the accident he could not drive rickshaw. At the same time, no medical evidence was produced to show that on account of shortening of the leg by one inch or multiple fracture of left leg the Appellant was unable to drive a rickshaw. At the same time, it cannot be lost sight that he would always have difficulty in pulling a rickshaw. In the circumstances, I would assess the permanent disability of 40% in respect of left lower limb affecting 20% of his earning capacity. I would make provision for the following compensation:

(i)	Conveyance @ 100/- per visit (40 visits)	Rs.4,000/-
(ii)	Special diet for one year	Rs.4,000/-
(iii)	Pain and suffering (considering the date of accident 18.9.1992)	Rs.15,000/-
(iv)	Loss of earning	Rs.25,000/-
(v)	Permanent disability affecting loss of earning capacity (2000 X 16 X 20%)	Rs.76,000/-
(vi)	Purchase of medicines/treatment	

(The treatment was in Govt. Hospital)

Rs.4,000/-

6. Overall compensation is enhanced from Rs.45,000/- to Rs.1,28,000/- which shall carry interest @ 9% per annum from the date of filing of the petition till the date of the award i.e. 20.3.2001 along with interest @ 7.5% per annum from the date of the award till the date of the payment in this Court. Respondent No.3 is directed to deposit the enhanced amount of Rs.1,28,000/- along with interest within a period of 30 days. I may further mention that on deposit of the amount, 50% shall be released to the Appellant forthwith; rest 50% be put in a fixed deposit for a period of two years in State Bank of India, Tis Hazari Branch, Delhi.

7. The appeal is allowed in the above terms.

(G.P. MITTAL)
JUDGE

MARCH 06, 2012
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