

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

Date of decision: 4th May, 2012

+ **FAO 212/2003**

PREM LATA ALFRAD Appellant
Through Mr. Sanjeev Mehta Advocate

versus

MATA DIN & ORS. Respondents
Through Mr. P.K. Seth, Adv.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 ₹1,05,000/- awarded in favour of the Appellant for having suffered injuries in a motor accident which occurred on 07.12.1987.
2. The Appellant was employed as a Nursing In-charge in Hindu Rao Hospital. On 07.12.1987 after finishing her duty at about 2:00 P.M. she was proceeding to her home in Ashok Vihar. She alighted from the bus and boarded a cycle rickshaw for reaching her home. When she was crossing Premvari Bridge, the rickshaw was struck by a truck No.DEL-4649 which was being driven by the first Respondent in a rash and negligent manner. She fell down from the rickshaw and suffered grievous injuries

including fracture pelvis, fracture right foot, dislocation of the right shoulder and injuries on right hip and cervical spine. Initially, she was removed to Hindu Rao Hospital, where she remained admitted from 07.12.1987 to 11.12.1987. She was then shifted to Sir Ganga Ram Hospital on 12.12.1983 and remained admitted there upto 17.12.1987. The Appellant had to take leave for a period of about eight months. She was awarded a compensation of ₹1,05,000/- which is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Medicines & Treatment	₹ 10,000/-
2.	Special Diet	₹ 5,000/-
3.	Conveyance	₹ 5,000/-
4.	Loss of Salary for 8½ months	₹ 20,000/-
5.	Attendant Charges	₹ 5,000/-
6.	Pain & Suffering & Disability	₹ 60,000/-
	Total	₹ 1,05,000/-

3. It is urged by the learned Counsel for the Appellant that the amount of compensation awarded under each of the heads (stated above) is very low. Some compensation ought to have been awarded to the Appellant towards loss of amenities in life as she suffered permanent disability to the extent of 5% in

respect of her right lower limb which was proved by PW-6 Dr. S.C. Verma.

4. It is contended that the Claims Tribunal erred in granting interest only for a period of four years on the ground that the Appellant contributed to the delay in disposal of the Petition. Since the Appellant was not solely responsible for the delay, she should have been granted interest for the entire period.
5. Section 168 of the Motor Vehicles Act provides for payment of just and fair compensation. In *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors, (1994) 2 SCC 176*, the Supreme Court observed that 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. At the same time, a misplaced sympathy, generosity and benevolence cannot be the guiding factor for determining the compensation. The object of providing compensation is to place the claimant(s), to the extent possible, in almost the same financial position, as they were in before the accident and not to make a fortune out of misfortune that has befallen them.

COMPENSATION TOWARDS PURCHASE OF MEDICINES AND TREATMENT

6. The learned Counsel for the Appellant urges that although the treatment in Hindu Rao Hospital was free, but she (claimant) remained admitted in Sir Ganga Ram Hospital for six days which is a very expensive hospital where the room charges are several thousand rupees. The Appellant was unable to preserve the bills. The compensation of ₹10,000/- was totally inadequate.
7. The Appellant was a Govt. servant and was entitled to reimbursement of expenses incurred on medical treatment. At the same time, she produced the bills Exs.PW-1/1 to PW-1/13 amounting to ₹3,500/- only. PW-4 Narender, Dealing Assistant in Hindu Rao Hospital testified that the Appellant had not claimed any reimbursement against the medical treatment from their hospital. In the absence of any evidence adduced by the Appellant, it is difficult to say as to how much amount was spent by the Appellant as an Indoor Patient in Sir Ganga Ram Hospital. It has to be borne in mind that this accident occurred in the year 1987 when the cost of treatment was not that high. The Appellant claimed a sum of ₹15,000/- in all. The Claims Tribunal in spite of the bills for just ₹3,500/- assessed that the Appellant must have spent about a sum of ₹10,000/-. I see no reason to differ with the assessment made by the Claims Tribunal. The Appellant is not entitled to any addition in the compensation awarded under this head.

SPECIAL DIET AND CONVEYANCE

8. As stated above, the Appellant remained admitted in Hindu Rao Hospital for six days and in Sir Ganga Ram Hospital for another six days. The Appellant is completely silent about the total number of visits to the hospital and to the doctors during the course of the treatment which lasted for about eight months. Travelling in a TSR in the year 1987-1988 would not cost more than ₹50/- both ways from Lawrence Road to Sir Ganga Ram Hospital or from Lawrence Road to Hindu Rao Hospital. In the circumstances, the Claims Tribunal was quite liberal in awarding a compensation of ₹5,000/- towards the amount spent on conveyance as the same could take care of about 100 visits, though in this case the number of visits would be much less. Similarly, considering the price index in the year 1987-88, award of compensation of ₹5,000/- towards special diet in the absence of any specific evidence on this count was very liberal.

LOSS OF LEAVE

9. The Appellant's salary was claimed to be ₹2,216/- and was established as ₹2,303/-. The award of compensation of ₹20,000/- towards Loss of Leave was just and proper.

ATTENDANT CHARGES

10. The Appellant claimed that she had to engage a servant @ ₹200/- per month as she was unable to look after the household work. She added that when her statement was recorded in the year 1999, she was still having pain and therefore had engaged

a servant and was paying him ₹900/- per month. The compensation for engaging an Attendant for the period of treatment as claimed by the Appellant @ ₹200/- per month would come to ₹1,600/-. The Appellant examined PW-6 Dr. S.C. Verma to prove the disability and her condition. In cross-examination the witness deposed that the Appellant was suffering from stiffness of the right big toe which may not be cured and the Appellant might have pain for a period of ten years. It may be noted that the statement of this witness was recorded on 07.03.2002 i.e. after about 15 years of the accident. The Appellant could have examined herself again from an Orthopaedic Surgeon in Hindu Rao Hospital where she was working and obtained a firm opinion as to the period upto which she would have pain. In any case, the pain in the right big toe would not entitle the Appellant to engage a servant to carry out the normal household work, while the Appellant was able to perform her normal official duties. In the circumstances, again the compensation of ₹5,000/- awarded by the Claims Tribunal for engaging an attendant was very liberal. It does not call for any enhancement.

PAIN AND SUFFERING

11. It is difficult to measure in terms of money the pain and suffering 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.

12. In this case, the Appellant remained admitted in the hospital for about six days in Hindu Rao Hospital and another six days in Sir Ganga Ram Hospital. She was put in a plaster in Sir Ganga Ram Hospital where the duration of the treatment was a little longer due to the nature of injuries i.e. fracture of pelvis, fracture of right foot, dislocation of the right shoulder and injuries on right hip and cervical spine.
13. Learned counsel for the Appellant relied on *Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Ltd. & Anr., 2011 (12) Scale 658*, where a compensation of ₹1,50,000/- was awarded towards pain and suffering and trauma.
14. In *Sri Laxman (supra)* the victim was a carpenter who suffered 26% disability as to his right lower limb and 25% disability to urethral injury and 38% disability vis-à-vis the whole body. In the instant case, the Appellant suffered a number of fractures which may not be as serious as in the case of *Sri Laxman*

(*supra*). The accident in *Sri Laxman (supra)* took place in the year 2003 whereas in the instant case the accident occurred more than 16 years before that date. Thus, I would say that the award of compensation of ₹60,000/- towards pain and suffering was again very liberal.

15. A fervent Appeal is made by the learned counsel for the Appellant that she (the Appellant) must be awarded some compensation towards Loss of Amenities in Life. It is true that duration of the Appellant's treatment was a little longer. The Appellant deposed that she could not travel to her office in a bus as she used to do. Here again, no expert evidence was produced by the Appellant that she was unable to travel in a public transport for a particular duration or throughout her life in spite of the fact that PW-6, who issued a Disability Certificate, was produced by her. PW-6 Dr S.C. Verma simply stated that the pain could last for a period of about ten years (in the big toe).
16. Considering the nature of permanent disability and the extent of injuries, I would award a compensation of ₹20,000/- towards Loss of Expectations and Loss of Amenities in Life.
17. The Claims Tribunal granted interest only for a period of four years till the date of the award. The Claims Tribunal opined that the Appellant contributed to the delay and the Petition was also dismissed in default. A perusal of the Court file reveals

that on a large number of hearings the Appellant did not take steps for service on the Respondents by filing process fees. Ultimately, on 28.04.1992 the Claim Petition was dismissed in default. The Appellant again was not vigilant enough to take steps for service of the notice on the application under Order IX Rule 4 CPC and the Claim Petition was restored by order dated 25.09.1995. The first witness was examined by the Appellant i.e. herself only in the year 2000. Thus, the Claims Tribunal was justified in awarding interest only for a period of four years.

18. As a result, the compensation is increased by ₹20,000/-. The Appellant shall be entitled to interest @ 9% per annum for a period of four years upto the disposal of the Appeal and then @ 7.5% per annum.
19. In the Appeal also, the Appellant was negligent. Steps were not being taken for filing fresh address of Respondents No.1 and 2 and also the process fees. The Appeal was dismissed in default on 15.02.2008. The application for restoration was also not pursued. The same was dismissed in default on 29.04.2008. Again application for restoration filed, was allowed and the Appeal was restored on 05.11.2009.
20. In the circumstances, the Appellant would be entitled to interest for a period of five years only during the pendency of the Appeal.
21. As a result, the Appellant shall be entitled to interest @ 9% per

annum for the period of four years upto the date of the decision of the Claim Petition and then for a period of five years @ 7.5% per annum during the pendency of the Appeal and thereafter till the payment is made by Respondent No.3 Insurance Company.

22. The enhanced amount of ₹20,000/- along with the interest shall be deposited in the name of the Appellant in UCO Bank, Delhi High Court, New Delhi. The amount payable shall be held in fixed for a period of two years.

23. The Appeal is allowed in above terms.

(G.P. MITTAL)
JUDGE

MAY 04, 2012

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