

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

Reserved on: 24th September, 2012
Pronounced on: 28th September, 2012

+ **MAC. APP. 21/2004**

TILAK RAJ

..... Appellant

Through : Mr. Sanjeev Mehta, Advocate.

versus

PARMOD KUMAR & ORS.

.... Respondents

Through : Ms. Manjusha Wadhwa, Advocate for
R-5.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appeal is for enhancement of compensation of ₹1,11,000/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the Appellant for having suffered fracture of tibia in both legs in a motor vehicle accident which occurred on 13.04.1986.
2. In the absence of any Appeal by the driver, owner or the Insurer of the truck No.RSF-6577, the finding on negligence has attained finality.
3. From the spot of the accident, Appellant was removed to JPN Hospital where he remained admitted from 13.04.1986 to 12.05.1986. He then remained under treatment in Sir Ganga Ram Hospital and was attended to by Dr. S.P. Mandal. He used to run a Printing Press in the name and style of Sunil Printers and was earning ₹15,000/- per month.

4. In the absence of any evidence with regard to the Appellant's income, the Claims Tribunal took the minimum wages of a semi-skilled worker to compute the compensation towards the loss of future earning capacity. The compensation awarded by the Claims Tribunal is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Expenses incurred on Purchase of Medicines and Treatment Charges	₹25,000/-
2.	Loss of Income During the Period of Treatment	₹ 12,000/-
3.	Compensation for Suffering Permanent Disability and Loss of Proportionate Future Income	₹ 54,000/-
4.	Compensation for Mental Torture, Pain and Loss of Amenities of the Life	₹ 10,000/-
5.	Expenses Incurred on Special Diet, Conveyance and Keeping of Assistant	₹ 10,000/-
	Total	₹ 1,11,000/-

5. Learned counsel for the Appellant states that the Appellant does not dispute the award of compensation towards expenditure for treatment.

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

- (i) The Appellant produced evidence in the shape of document Exs.PW-4/1 and PW-4/1A to prove that he was running his printing business in the name and style of Sunil Printers. His testimony that he was earning ₹15,000/- per month was not

challenged in cross-examination. The Claims Tribunal erred in assessing his income on minimum wages and awarding compensation on that basis.

- (ii) The compensation awarded towards pain and suffering, loss of amenities, attendant charges and towards special diet is on the lower side.
- (iii) No compensation was awarded to the Appellant towards future treatment.
- (iv) The interest awarded @ 4% per annum was very low. The Claims Tribunal erred in blaming the Appellant for delay in disposal of the Claim Petition.

7. Section 168 of the Motor Vehicles Act, 1988 (the Act) enjoins payment of just compensation. 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 *Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka & Ors.*, (2009) 6 SCC 1, the Supreme Court emphasized that cases of serious injuries in motor vehicle accident are worse than the death cases because the victim and his family suffers throughout life. Para 90 of the report is extracted hereunder:-

“90. At the same time we often find that a person injured in an accident leaves his family in greater distress vis-à-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity.”

INCOME

9. I have before me the testimony of Appellant who examined himself as PW-4. The Appellant as PW-4 testified that he was running his business of Printing Press in the name and style of Sunil Printers at 1786-C/131, Tri Nagar. He proved the registration under Delhi Shops & Establishments Act, 1954 with the Labour Department as Ex.PW-4/1 and the registration under Section 4 & 5 of the Press & Registration of Books Act, 1867 as Ex.PW-4/1A. The Appellant's testimony with regard to his self-employment and income was not challenged. Any income beyond ₹ 18,000/- per annum in the Assessment Year 1987-88 was taxable.
10. At the same time, it may be noticed that in the First Claim Petition filed on 13.09.1988, the Appellant claimed his income to be ₹1300/- per month. He filed an amended Claim Petition in the year 1994. He reiterated his income from the business of printing press as ₹1300/- per month and claimed a total compensation of ₹1,00,000/-. By virtue of an Application under Order XVI Rule 17 CPC, dated 21.04.1999, the Appellant wanted to carry out certain amendments. He never pleaded that his income was wrongly mentioned as ₹1300/- per month. But, in the amended Claim Petition, the income claimed was unauthorizedly

mentioned as ₹1500/- per month. No documentary evidence was produced by the Appellant with regard to his income. Thus, taking into consideration the Appellant's testimony and the fact that he himself mentioned his monthly income as ₹1300/- per month through out, I would make the assessment of his income as ₹1000/- per month as against ₹500/- per month taken by the Claims Tribunal.

LOSS OF INCOME

11. It is proved on record that there was fracture of shaft of femur of both legs. The Appellant remained admitted in LNJP hospital from 13.04.1986 to 12.05.1986. During the period of his admission, K-nailing was done under spinal anesthesia by a team headed by Dr. Mathew. The Appellant then remained admitted in Sir Ganga Ram Hospital from 12.06.1986 to 19.06.1986 and then again from 18.11.1993 to 24.11.1993. In any case, it can be assumed that the Appellant was unable to attend to his work for a period of about 18 months. Thus, he would be entitled to compensation of ₹18,000/- as against a compensation of ₹12,000/- awarded by the Claims Tribunal.

LOSS OF EARNING CAPACITY

12. The Appellant proved the Disability Certificate Ex.PW-4/2 to the effect that he has permanent disability to the extent of 40%. He examined PW-6 Dr. S.P. Mandal to authenticate the Disability Certificate Ex.PW-4/2. PW-6 Dr. S.P. Mandal's testimony that the patient cannot stand for long and that on account of disability he would limp remained unchallenged and un-rebutted. At the same time, no positive evidence was led with relation to the nature of his employment.

13. In *Raj Kumar v. Ajay Kumar & Anr.*, 2011 (1) SCC 343, the Supreme Court brought out the difference between permanent disability and functional disability resulting in the loss of earning capacity. It was laid down that the compensation on account of loss of earning capacity has to be granted in accordance to the nature of job undertaken by the victim of motor accident. Paras 11 and 14 of the report are extracted hereunder:

“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

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 find 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.”

14. In the circumstances, I am left to make a guess work with regard to the loss of earning capacity. Although, the disability is only 40% with respect to the lower limb, I would take the same to be 20% functional disability, keeping in view the fact that the work could be carried out while sitting. The Appellant would be entitled to an addition of 30% being a self-employed person on the basis of the report of the Supreme Court in *Santosh Devi v. National Insurance Company Ltd. & Ors., 2012 (4) SCALE 559*.
15. The loss of earning capacity thus comes to ₹43,680/- (1,000/- + 30% x 12 x 14 x 20%) as against ₹54,000/- awarded by the Claims Tribunal.

PAIN AND SUFFERING & LOSS OF AMENITIES IN LIFE

16. It is urged by the learned counsel for the Appellant that the compensation of ₹10,000/- awarded towards pain and suffering and loss of amenities in life is on the lower side. It is urged that the Appellant ought to have been awarded compensation separately towards pain and suffering and towards loss of amenities in life.
17. I would agree with the learned counsel for the Appellant that compensation under both these heads should be awarded separately.
18. Learned counsel for the Appellant places reliance on *Manoj Rathaur v. Anil Raheja & Ors., 2012 ACJ 1459* where a compensation of ₹18,800/-

awarded by the Claims Tribunal was enhanced to ₹3 lacs. *Manoj Rathaur* is not attracted to the facts of the present case. In *Manoj Rathaur*, the accident took place in the year 2007. In the instant case, the accident took place in the year 1986. The compensation has to be as per the value of the money at the time of the accident. Normally, an addition of interest is made in the amount of compensation to compensate the victim/legal representatives of the deceased for the deferred payment.

19. In case of *Govind Yadav v. New India Insurance Co. Ltd. (2011) 10 SCC 683*, in case of amputation of one leg in an accident in the year 2004 a compensation of ₹1.5 lacs each was awarded towards pain and suffering and loss of amenities in life including loss of marriage prospects.
20. In the instant case, the Appellant was a married person. Keeping in view that this accident took place in the year 1986, the Appellant is entitled to a compensation of ₹10,000/- towards pain and suffering and ₹10,000/- towards loss of amenities in life.

ATTENDANT CHARGES

21. The Appellant examined PW-5 to prove that he worked as an Attendant for two years and charged a salary @ ₹ 600/- per month. The Appellant as PW-4 also testified to this fact. Considering the nature of injuries and the successive surgeries undergone by him, the Appellant is awarded a compensation of ₹14,400/- @ ₹600/- per month for 24 months.
22. Keeping in view that the accident took place in the year 1986, the compensation towards the Conveyance Charges and towards special diet is separately awarded @ ₹5,000/- each.

FUTURE TREATMENT

23. Learned counsel for the Appellant referred to the document Ex.PW-4/16 to contend that he was to undergo future treatment. This document shows that the implant removal was done on 20.11.1993. The Appellant has already been awarded full compensation towards expenditure on treatment as stated by the learned counsel for the Appellant. No other evidence has been led by the Appellant that he needed any future treatment. Thus, no compensation is required to be granted towards future treatment.

24. It is urged by the learned counsel for the Appellant that this accident took place in the year 1986 when the interest rates were very high. The Claims Tribunal erred in granting interest only @ 4% per annum. The Claims Tribunal dealt with the question of grant of interest in Para 7 of the impugned judgment which is extracted hereunder:-

“7. The ld. Counsel for the Respondent No.5 has contended that conduct of the petitioner in prosecuting his petition in such that he is not entitled to any interest on the awarded compensation. He has pointed out that this petition was dismissed-in-default on 13.9.2000 and could be restored on 23.3.01 and the petitioner has taken considerable time in examining the witnesses. I find some force in the contention raised by counsel for the Respondent No.5. Accordingly, I allow an interest @ 4% to the petitioner on the said awarded compensation from the date of the petition i.e. 13.9.1988 till realisation.”

25. It is true that the Appellant himself was not solely responsible for the delay. But, he also contributed to the delay as many times he did not take steps for service of Respondents. He was slow in impleading the Respondent Insurance Company. He moved an application for amendment of the Claim Petition in the year 1999 and then did not pursue

it. The Application for amendment was decided by order dated 21.07.2003. In the circumstances, the Claims Tribunal was justified in granting interest @ 4% per annum from the date of filing of the Petition till its payment.

26. In view of the above discussion, the compensation awarded is re-computed as under:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Medicines and Treatment	₹25,000/-
2.	Loss of Income	₹ 18,000/-
3.	Loss of Future Earning Capacity	₹ 43,680/-
4.	Pain and Suffering	₹ 10,000/-
5.	Loss of Amenities in Life	₹ 10,000/-
6.	Attendant Charges	₹ 14,400/-
7.	Conveyance Charges	₹ 5,000/-
8.	Special Diet	₹ 5,000/-
	Total	₹ 1,31,080/-

27. The compensation is thus enhanced from ₹1,11,000/- to ₹1,31,080/-.
28. The enhanced compensation of ₹20,080/- shall carry interest @ 4% per annum from the date of filing of the Petition till the date of award and then @ 7.5% per annum from the date of filing of the Appeal till its deposit with the Claims Tribunal.

29. Respondent No.5 Oriental Insurance Company Limited is directed to deposit the enhanced compensation along with interest with Claims Tribunal within six weeks.
30. The enhanced compensation shall be released in favour of the Appellant on deposit.
31. The Appeal is allowed in above terms.
32. Pending Applications stands disposed of.

(G.P. MITTAL)
JUDGE

SEPTEMBER 28, 2012

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