

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

Date of decision: 22nd May, 2012

+ **MAC.APP. 22/2004**

DEV BRAT TIWARI Appellant
Through: Mr. Tarun Rana, Advocate

versus

STATE (NCT OF DELHI) & ORS. Respondents
Through: Nemo.

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 ₹1,12,200/- awarded to the Appellant for having suffered injuries in a motor accident which occurred on 11.01.1992.
2. During inquiry before the Motor Accident Claims Tribunal (the Claims Tribunal) it was established that the Appellant suffered head injury with facio maxillary injury (right), fracture lower end of radius (left), compound and comminuted fracture, tibia and fibula (left) and fracture right mandible. He (the Appellant) was working as an Air Craftsman in Indian Air Force and was getting a salary of ₹1,500/- per month on the date of the accident.

3. The Claims Tribunal awarded a compensation of ₹1,12,200/- which is tabulated hereunder:-

Sl.No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Medicines	₹1,000/-
2.	Conveyance	₹ 2,000/-
3.	Special Diet	₹ 5,000/-
4.	Loss of Leave	₹ 3,000/-
5.	Pain & Suffering	₹ 40,000/-
6.	Permanent Disability, Loss of Earnings, Loss of Enjoyment, Amenities in Life and Frustration	₹ 61,200/-
	Total	₹ 1,12,200/-

4. The Appellant's grievance is that although, it was established before the Claims Tribunal that he would not get future promotion as he was placed in low medical category CEE (Permanent) and the Claims Tribunal accepted the Appellant's case on this count, yet no compensation was awarded towards the loss of promotion to the higher rank.
5. The Claims Tribunal dealt with the injury, permanent disability and promotion to the higher rank as under:-

“9. As per the medical case sheet dt. 21.12.2000

issued by the Medical Officer of Army hospital, it is mentioned that in road traffic accident dt. 11.1.92 the petitioner sustained head injury with facio maxillary injury (R), fracture lower end radius (L), compound comminuted fracture, tibia and fibula (L) and fracture right mandible and he has been placed in low medical category CEE (permanent) w.e.f. January, 1993 and it was recommended that this category CEE (Permanent) will continue and next Board would be on 30.9.01. The petitioner has also placed on record the photo copy of medical case sheet dt. 29.10.01 and it is mentioned that petitioner sustained injuries on 11.1.92 and it was recommended by the Board that he will continue in low medical category CEE (Permanent) and next Board is due on 4.10.02. As per another medical case sheet dt. 9.3.02, it is mentioned that the petitioner suffered compound comminuted fracture, lower 1/3rd of tibia and fibula (L), fracture colles (L), fracture patella (L), fracture mandible (R), fracture zygoma (R) and maxilla (L) and head injury with fracture sinus. As per the photo copy of discharge slip of Army Hospital Delhi Cantt. the petitioner was admitted there on 11.1.92 and discharged on 27.5.92 and he was diagnosed for suffering compound fracture tibia and fibula (L), fracture patella (L), fracture mandible (R), fracture colles (R) and head injury and he was recommended 8 weeks sick leaves. As per the Medical Board proceedings dt. 30th September, 1996, the percentage of disability of the petitioner was assessed at 30%. As per document Ext.PW1/1 dt. 5.10.98 it was certified by Fit. Lt. that the petitioner has been placed in low medical category CEE (Permanent) and being category CEE (Permanent) he will not be promoted for higher rank.

10. The petitioner has not placed on record his salary certificate. He has only mentioned his basic salary of ₹1150/- plus D.A., plus other allowance in the petition and actual amount of D.A. and other allowances is not mentioned. He has also not mentioned his gross salary.

As per the medical documents placed on record, the petitioner has been working in Indian Air Force and thus his gross salary would be at least ₹1500/- p.m. at the time of accident in question. The petitioner admitted in his examination-in-chief that he was provided free treatment in the Army hospital as well as in Artificial Limb Centre Pune but he purchased medicines worth ₹1,000/- as the same were not available there. Though the petitioner has not placed on record the cash memos for purchase of medicines yet this is common knowledge that the patients are generally asked to buy those medicines from the market which are not found available there and the petitioner must have spent some amount on purchase of medicines. He must have also spent some amount on conveyance in visiting the hospitals for his follow-up treatment and some amount on consuming rich protein diet for his early recovery. It is admitted that during his admission in the Army Hospital from 11.1.92 to 27.5.92 no leave of the petitioner was deducted but he was recommended sick leaves for 8 weeks and hence, the petitioner would be entitled for compensation for loss of leaves also. Now, it would meet the interest of justice, if the following pecuniary damages are awarded to the petitioner:-

<i>i) Amount spent on medicines :</i>	<i>₹1,000/-</i>
<i>ii) Amount spent on conveyance :</i>	<i>₹2,000/-</i>
<i>iii) Amount spent on special diet :</i>	<i>₹5,000/-</i>
<i>iv) Loss of leaves</i>	<i>₹3,000/-</i>

Total : ₹11,000/-

Having suffered the said multiple fractures of left leg, left knee, left knee, left wrist and fracture mandible and head injury, the petitioner must have undergone a lot of physical and mental agony and pain and it would meet the ends of justice, if further a sum of ₹40,000/- is awarded under this head. The petitioner has suffered a permanent disability of 30% and he has been kept in low

medical category CEE (Permanent) and cannot be promoted for higher rank and thus the petitioner is also entitled for compensation for suffering permanent disability, loss of earnings, loss of enjoyment, amenities in life and frustration etc. 30% of monthly income of ₹1500/- comes to ₹450/- and after deducting 1/3rd personal expenses, loss comes to ₹300/- and annual loss comes to ₹3600/- and in the facts and circumstances of the case, after applying the multiplier of 17, the compensation under this head comes to ₹61,200/-. The total amount of compensation thus comes to ₹1,12,200/- which the petitioner is entitled to recover from the respondents.....”

6. Thus, it is evident that the Claims Tribunal accepted that the Appellant would lose promotion to the higher ranks. Annexure D in the shape of a chart was placed on the paper book to show that the Appellant could have been promoted as Sargent, Junior Warrant Officer, Warrant Officer and Master Warrant Officer. At the same time, it was not proved by leading any evidence as to how much time it takes to get promotion from one rank to another rank. Thus, I have simply to make a guess work to award compensation towards the loss of promotion as it would not be expedient to remand the case and seek evidence after 20 years of the accident.
7. In the circumstances, the compensation of ₹61,200/- which has been awarded towards the permanent disability, loss of earning capacity, loss of enjoyment and loss of amenities in life is treated as towards the permanent disability and loss of future promotion. I further award a sum of ₹40,000/- towards the loss

of amenities and expectations in life.

8. Thus, the compensation stands enhanced by ₹40,000/- which shall carry interest @ 9% per annum from the date of filing of the Petition till it payment.
9. The Respondent Rajasthan Transport Corporation, the owner of the offending vehicle being employer of the second Respondent is directed to deposit the enhanced amount of compensation in the name of Appellant with the concerned Claims Tribunal within six weeks. The compensation deposited shall be released to the Appellant forthwith.
10. The Appeal is allowed in above terms.
11. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

MAY 22, 2012
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