

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

Date of decision: 11th July, 2012

+ **MAC.APP. 238/2004**

SMT. SANTRA KUMARI Appellant
Through: Mr. O.P. Mannie, Adv.
versus

BHAGWAN & 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 ₹38,600/- awarded in favour of the Appellant Santra Kumri for having suffered a crush injury on her left foot and multiple injuries on her body in a motor vehicle accident which occurred on 4.11.1995.
2. On 04.11.1995 at about 7:30 P.M., the Appellant along with her son Anirudh and daughter Anju Bala was travelling in a TSR. When the TSR reached near Village Gomaspur, G.T. Road, a DTC bus No.DHP-3747 driven by the First Respondent in a rash and negligent manner came from Murthal side and struck against the TSR. After the accident the Appellant was removed to Civil Hospital, Sonipat. She suffered four injuries including a crush injury on the lateral side of left foot and ankle joint. She was discharged from the hospital on 01.12.1995 and remained

under treatment in Bharat Hospital and Dua Hospital. A Disability Certificate Ex.PX was issued to her showing that she had suffered permanent disability in respect of her left lower limb to the extent of 20%.

3. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of DTC bus by the First Respondent. In the absence of any Appeal by the Respondents, the finding on negligence has attained finality.
4. The Claims Tribunal held that no documentary evidence was led by the Appellant with regard to the expenditure on her treatment. The Claims Tribunal took the permanent disability to the extent of 20% in respect of left lower limb to be 5% in respect of her whole body and awarded a compensation of ₹30,600/- assuming the Appellant's value of a gratuitous services as ₹3,000/- per month. The Claims Tribunal further awarded a sum of ₹1,000/- towards medical treatment, ₹1,000/- towards special diet and conveyance, ₹3,000/- towards loss of gratuitous services to the family members for one month; and ₹3,000/- towards pain and suffering.
5. It is urged by the learned counsel for the Appellant that no compensation was awarded towards loss of amenities in life; the compensation awarded towards pain and suffering, special diet and conveyance is wholly inadequate. The Appellant

remained in the hospital for about 25 days. She could not have resumed her work within one month of the injuries.

6. 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.”

7. While dealing with the nature of injuries and quantum of compensation, the Claims Tribunal observed as under:-

“....As per PW1 she remained admitted in the hospital for about one month after the accident and was discharged on 01/12/95 while petitioner Anirudh remained in the hospital for 10-12 days. She also stated that after discharge from hospital she got herself treated at Bharat Hospital and Dua Hospital. She stated to have spent ₹60-65,000/- on her treatment. She also stated that an operation was performed on her foot at Dua Hospital. PW1 stated that she had not brought bills from Dua Hospital and stated that till the time of her testimony her wounds had not healed. She also proved on record as Ex.PX the physical disability certificate issued by CMO, Sonapat.

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In her cross examination PW1 stated that she did not have any documentary evidence as regards the money spent on treatment of both the petitioners. PW1 also proved on record as PY Out Door Tickets of Civil Hospital, Sonapat and as Ex.PZ, treatment card of petitioner Anirudh at LNJP Hospital.

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So far as petitioner Santra is concerned, MLC Ex.PW2/B shows that she was admitted on 04/11/95 in the hospital but her date of discharge has not been mentioned in the MLC. Her date of discharge is mentioned in outdoor ticket Ex.PY as 01/12/95.

As admitted by PW1 in her testimony, she has not filed any bills of medical treatments. Although PW1 stated that she was treated at Bharat Hospital and Dua Hospital, neither any bills nor any other medical document to that effect has been proved on record. As per record her entire treatment was done in government hospital. But some expenditure must have occurred on purchasing medicines from market. Since no specific evidence was led on this, in lump sum towards medical treatment I award to petitioner Santra a sum of ₹1,000/-. Towards special diet and conveyance, though petitioner did not lead any evidence in lump sum looking into the nature of injuries sustained by her I award a sum of ₹1,000/-. Towards plain and agony I award a sum of ₹3,000/-. As per record, petitioner Santra was a housewife. At the same time contribution of a housewife to the house hold activities is too significant to be ignored. Following the observations of hon'ble Supreme Court in the case of Lata Wadhwa & Others vs. State of Bihar & Others (2001) 8 SCC 197, notional income of petitioner Santra is taken as ₹3,000/- per month. For the period of one month when she was hospitalized, I award her a sum of ₹ 3,000/- towards loss of earnings. As per Ex.PX, petitioner sustained physical disability of 20% as regards

her left foot. As regards the entire body disability is taken as 5%. As per MLC age of petitioner Smt. Santra was 35 years at the time of accident. Appropriate multiplier as per second schedule M.V.Act, 1988 would be 17. Loss of future earnings accordingly comes to ₹3,000/- x 12 x 17 x 5% + ₹30,600/- and I award the same to petitioner Smt. Santra. In all I award to the petitioner Smt. Santra a sum of ₹38,600/- (Rupees Thirty Eight Thousand Six Hundred Only) towards compensation for the injuries sustained by her in a roadside accident.”

8. It is not in dispute that the Appellant did not produce any documentary evidence with regard to the expenditure incurred on medical treatment, conveyance and special diet. The treatment was largely received in a Govt. hospital. Although, the Appellant claimed that she was operated upon in Dua Hospital, yet no document was produced in this regard. In the circumstances, the Claims Tribunal was justified in granting a sum of ₹1,000/- towards treatment.
9. Considering the nature of injuries, hospitalization in civil hospital Sonipat, particularly when the Appellant was a resident of Delhi, I would enhance the compensation of ₹1,000/- awarded towards special diet and conveyance to ₹4,000/- (₹2,000/- each towards special diet and conveyance).
10. Since the Appellant remained admitted in the hospital for about one month, I would assume that she could not have attended to the household work immediately after her discharge from the hospital, particularly, in view of the crush injury on the left foot.

The compensation of ₹3,000/- awarded towards gratuitous services for month is, therefore, enhanced to ₹6,000/- for two months (3,000/- x 2).

11. Because of the crush injury on the left foot, the Appellant would not be able to run, stand for long hours and would have difficulty in walking. No compensation has been awarded by the Claims Tribunal towards loss of amenities. Considering that the accident took place in the year, 1995 I would make a provision of ₹25,000/- towards loss of amenities.
12. 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. I enhance the compensation from ₹3,000/- to ₹15,000/- under this head.
13. The compensation awarded is tabulated hereunder:-

Sl.	Compensation under various heads	Awarded by the Claims	Awarded by this
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No.		Tribunal	Court
1.	Special Diet & Conveyance	₹1,000/-	₹4,000/-
2.	Loss of Earnings	₹ 3,000/-	₹ 6,000/-
3.	Pain and Suffering	₹ 3,000/-	₹ 15,000/-
4.	Medical Treatment	₹1,000/-	₹1,000/-
5.	Loss of Amenities	--	₹ 25,000/-
6.	Loss of Future Earnings	₹ 30,600/-	₹ 30,600/-
	Total	₹ 38,600/-	₹ 81,600/-

14. No other contention has been raised.
15. The overall compensation is thus enhanced from ₹38,600/- to ₹81,600/-.
16. The enhanced compensation of ₹43,000/- shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.
17. Respondents No. 2 and 3 are directed to deposit the enhanced compensation along with interest with the Claims Tribunal within six weeks which shall be released to the Appellant immediately on deposit.
18. The Appeal is allowed in above terms.

(G.P. MITTAL)
JUDGE

JULY 11, 2012

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