

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

Date of decision: 10th September, 2012

+ **MAC APP. 305/2004**

RAHUL BEDI

..... Appellant

Through: Mr. Adv.

versus

KANWAR PAL & ORS

..... Respondents

Through: Mr. Pankaj 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 ₹1,27,000/- awarded in favour of the Appellant for having suffered injuries in a motor vehicle accident which occurred on 09.10.1994.
2. In the absence of any Appeal by the driver, owner or the Insurance Company the finding on negligence has attained finality.
3. On account of the accident, the Appellant suffered fracture mandible, there was also loss of flesh from the face and jaw. He remained admitted in Holy Family Hospital, New Delhi from 09.10.1994 to 22.10.1994. The Appellant examined PW-1 Dr. Manohar Lal Sharma who testified that the Appellant had suffered 100% cosmetic disability, although, the same may not be functional disability. He testified that the Appellant's lip muscles had been damaged and there is partial paralysis of tongue. The Appellant therefore would have some difficulty in speaking fluently.

4. The Appellant was aged only 5 years at the time of the accident. The Claims Tribunal took 40% disability with respect to his body and awarded overall compensation of ₹1,27,000/- which is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Pain and Suffering	₹5,000/-
2.	Conveyance and Special Diet	₹ 5,000/-
3.	Medicines	₹ 27,000/-
4.	Loss of Income due to Injuries @ ₹15,000/- p.a.	₹ 90,000/-
	Total	₹ 1,27,000/-

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

- (i) The Claims Tribunal erred in awarding compensation on notional income of ₹15,000/-, particularly, when the Second Schedule was not even in the Statute at the time of the accident.
- (ii) The Appellant would have to incur expenditure of ₹10 lacs on cosmetic surgery as stated by PW-1. No compensation for the same was awarded.
- (iii) The compensation awarded towards loss of amenities and disfigurement and towards pain and suffering is on the lower side.

6. PW-1's testimony that, apart from disfigurement of the Appellant's face, he would have difficulty in speaking fluently and clearly, was not

challenged in cross-examination. The Appellant was a small child of 5 years at the time of accident and now he is 23 years. He has started running a shop which sells mobile phones. He should have been awarded compensation on the basis of minimum wages of a Matriculate instead of a notional income or an income of a skilled worker with addition of 30% towards inflation on the basis of judgment of the Supreme Court in *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559 and relied by this Court in *Rakhi v. Satish Kumar & Ors.* (MAC. APP. 390/2011) decided on 16.07.2012.

7. The loss of earning capacity thus comes to ₹2,05,545/- (1830/- + 30% x 12 x 18 x 40%) as against ₹90,000/- awarded by the Claims Tribunal.
8. PW-1 examined by the Appellant during inquiry before the Claims Tribunal testified that with successive cosmetic surgeries, the Appellant's face would be partially repaired. Deep scars would still remain on the face after the surgery. He gave the expenditure to be ₹10-12 lacs for cosmetic surgery which would take about three years. By the order of this Court, the Appellant was ordered to be examined by a Cosmetic Surgeon from B.L.K. Memorial Hospital, Pusa Road, New Delhi. Dr. Avtar Singh Bath, Senior Consultant and Head of the Department of Plastic and Reconstructive Surgery issued a certificate in pursuance of the order of this Court dated 12.08.2009. According to the said certificate dated 15.09.2009 the Appellant underwent scars revision and dermafat (skin and fat) grafting on 01.06.2004 and then on 01.06.2007. The doctor gave the cost of future treatment to be ₹2 lacs. Relevant portion of the certificate is extracted hereunder:-

“.....He was treated at Holy Family Hospital, where open reduction and internal fixation of fracture mandible was performed and multiple extensive wounds were sutured. Thereafter on 25 Mar 1995 patient underwent removal of wires used for fixation of fracture mandible. Subsequently on 01 June 2004 patient underwent Scard Revision and Dermafath (skin and fat) grafting. Again on 01 Jun 2007 patient had another surgery in the form of Scars Revision and Augmentation of right side of mandible with Porex (synthetic material) implant. At present he complains of deformity of face and multiple wide-scars on right side of face. He also complains of difficulty in full opening of mouth and chewing of hard food.

Examination reveals that he has gross atrophy (wasting) of tissues on right side of face. There are three linear 12 cm long stretched out (2mm-4mm) scars on right side of face. Clinically fracture mandible has united well with satisfactory occlusion of teeth. Most of dermafath graft has got absorbed but porex implant has taken up well. Mouth opening is satisfactory. The patient can have significant improvement by multiple sessions (four) of fat grafting followed by staged (three procedures) scar revision. Total cost of treatment will be approximately ₹2.00 lacs.”

9. In the circumstances, the Appellant is entitled to the cost of ₹2 lacs towards future treatment as against ₹10 lacs deposited by PW-1. Dr. Manohar Lal Sharma.
10. Considering the nature of injuries and the fact that the Appellant was a small child of five years and had to undergo successive surgeries right from the date of the accident and shall have to undergo further treatment, a sum of ₹5,000/- awarded towards pain and suffering is on the lower side, the same is raised to ₹25,000/-.
11. Similarly, no compensation was awarded towards loss of amenities and disfigurement. Keeping in view that the Appellant would have difficulty

in speaking fluently and there is disfigurement of face, I would award a sum of ₹50,000/- towards loss of amenities and disfigurement.

12. The compensation awarded is re-computed as under:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Pain and Suffering	₹5,000/-	₹25,000/-
2.	Conveyance and Special Diet	₹ 5,000/-	₹ 5,000/-
3.	Medicines	₹ 27,000/-	₹ 27,000/-
4.	Loss of Income	₹ 90,000/-	₹2,05,545/-
5.	Future Treatment	--	₹ 2,00,000/-
6.	Loss of Amenities & Disfigurement	--	₹ 50,000/-
	Total	₹ 1,27,000/-	₹ 5,12,545/-

13. The compensation is enhanced by ₹3,85,545/-. The compensation of ₹1,85,545/- shall carry interest @ 7.5% per annum from the date of filing of the Petition till its deposit with the Claims Tribunal.
14. The compensation of ₹2,00,000/- awarded towards future treatment shall carry interest w.e.f. 15.09.2009 as the cost of treatment was given on this date by Dr. Avtar Singh Bath.
15. Respondent No.3 New India Insurance Company Limited it directed to deposit the enhanced compensation along with interest with the Claims Tribunal within six weeks.

16. Out of the enhanced compensation a sum of ₹1,00,000/- shall be released in favour of the Appellant immediately. A sum of ₹2.5 lacs shall be released to him as and when the Appellant takes admission for derma fat grafting etc. etc.
17. Rest of the compensation shall be held in fixed deposit for a period of four years on which the Appellant shall be entitled to quarterly interest.
18. The Appellant shall be entitled to approach the Claims Tribunal for release of the amount from time to time, which the Claims Tribunal shall be entitled to decide as per the Appellant's need.
19. The Appeal is allowed in above terms.
20. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

SEPTEMBER 10, 2012

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