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

Date of decision: 30th August, 2012

+ **MAC. APP. No.508/2004**

RAJ KUMAR

..... Appellant

Through: Mr. Sanjeev Mehta, Advocate.

Versus

NARESH KUMAR & ORS.

..... Respondents

Through: Mr. A.K. Soni, Advocate for the
Respondent No.3 Insurance Company.

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 ₹2,45,930/- awarded by the Motor Accident Claims Tribunal(the Claims Tribunal) in favour of the Appellant for having suffered injuries resulting into the amputation of his right forearm(below elbow) in a motor vehicle accident which occurred on 18.09.1996.
2. According to the Appellant, on 18.09.1996 at about 3:30 pm the Appellant was carrying his fruits in a tempo No.DL-1LB-5252. The tempo was being driven by the First Respondent at high speed and in a rash and negligent manner. When the tempo reached near Britannia Chowk, the First Respondent lost control over the vehicle which climbed on the pavement and overturned. The Appellant was removed to Hindu

Rao Hospital where he remained admitted from 18.09.1996 to 05.10.1996. Amputation of the right hand (below elbow) was carried out. He was discharged on 05.10.1996 with an advice to attend the OPD after seven days. The Appellant remained admitted in Bhagat Hospital from 06.10.1996 to 26.10.1996. He was issued a disability certificate Ex.P-5 whereby he was declared to have suffered permanent disability above 50% because of amputation of his right hand.

3. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of the offending tempo by the First Respondent. The Second Respondent who was owner of the offending tempo raised a plea before the Claims Tribunal that he had already sold the tempo to the First Respondent. Respondent No.3 Insurance Company took up the plea that the First Respondent(the driver of the offending vehicle) did not possess a valid driving licence to drive the offending vehicle. It was proved that the driving licence held by the First Respondent was fake. The Claims Tribunal held that the Respondent No.3 Insurance Company failed to prove that there was a conscious and willful breach of the terms of the policy. Thus, relying on *Sohan Lal Passi v. P. Sesh Reddy*, (1996) 5 SCC 21, *Skandia Insurance Company Limited v. Kokilaben Chandravadan*, (1987) 2 SCC 654, *New India Assurance Co., Shimla v. Kamla and Ors.*, (2001) 4 SCC 342 and *United India Insurance Company Ltd. v. Lehu & Ors.*, (2003) 3 SCC 338, it made the Respondent No.3 Insurance Company liable to pay the compensation and denied the recovery rights to it.
4. In the absence of any Appeal by the driver, owner and the insurer, the finding on negligence has attained finality. The Respondent No.3

Insurance Company does not dispute the finding on liability as it has not filed any Appeal against the impugned judgment.

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

- (i) The Appellant was a fruit vendor. He was earning ₹4,000/- per month. The Claims Tribunal erred in awarding loss of earning capacity on minimum wages of an unskilled worker.
- (ii) The Appellant's age at the time of the accident was about 22 years. The Claims Tribunal erred in taking his age as 35 years. The appropriate multiplier towards loss of future earning capacity should have been taken as '18' instead of '15'.
- (iii) Since the Appellant was a self employed person carrying manual work, he was rendered jobless on account of amputation of his right arm. Loss of earning capacity in his case should have been taken as 100% instead of 50% taken by the Claims Tribunal.
- (iv) No compensation was awarded towards loss of income for the period of confinement.
- (v) Considering the nature of injuries, the Appellant needed help of an attendant to carry out his day to day work. No compensation was awarded towards attendant charges.
- (vi) The compensation awarded towards non-pecuniary heads is on the lower side.

6. On the other hand, the learned counsel for the Respondent Insurance Company supports the judgment and states that the compensation awarded is just and reasonable.

7. Section 166 of the Motor Vehicles Act, 1988(the Act) enjoins payment of just compensation. Undisputedly, grant of compensation involving an accident is within the realm of Law of Torts. It is based on the principle of restitution in integrum. The said principle provides that a person entitled to damages should, as nearly as possible, get that sum of money which would put him in the same position as he would have been if he had not sustained the wrong. (*Livingstone v. Rawyards Coal Co.*(1880) 5 AC 25).
8. In *Arvind Kumar Mishra v. New India Assurance Company Limited*, (2010) 10 SCC 254, the Supreme Court dealt with the case of disability of an engineering student. The Supreme Court observed that while awarding compensation in personal injury cases, an attempt should be made to put the injured in the same position as he was as far as money is concerned. In para 9 of the report, the Supreme Court held as under:
- “9. We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was insofar as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered.”
9. 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.”

10. In *Raj Kumar v. Ajay Kumar & Anr.*, 2011 (1) SCC 343, the Supreme Court laid down that the compensation should, to the extent possible, fully and adequately restore the Claimant to the position prior to the accident. It was stated that at the same time the Court and the Tribunal must exclude from consideration any speculation or fancy though some conjecture with reference to the nature of disability and its consequences is inevitable. Paras 5 and 6 of the Report are extracted hereunder:

“5. The provision of the Motor Vehicles Act, 1988 ('the Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could

have earned. [See C.K. Subramonia Iyer v. T. Kunhikuttan Nair, AIR 1970 SC 376, R.D. Hattangadi v. Pest Control (India) (P) Ltd., 1995 (1) SCC 551 and Baker v. Willoughby, 1970 AC 467.

6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.”

11. In *Raj Kumar*, the Supreme Court further 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.

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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 found 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.”

LOSS OF EARNING CAPACITY:

12. It is urged by the learned counsel for the Appellant that the Appellant established his income as ₹4,000/- per month and thus he should have been awarded compensation towards loss of earning capacity on an income of ₹4,000/- per month and on making addition towards inflation. It is stated that since the Appellant was a manual worker, loss of his earning capacity should have been taken as 100%. Reliance is placed on *Mohan Soni v. Ram Avtar Tomar & Ors.*, (2012) 2SCC 267 where in case of amputation of one leg, loss of earning capacity was taken 90% as against permanent disability to the extent of 60%.
13. In the instant case, the Appellant's version that he was working as a fruit vender was not seriously challenged. In the Claim Petition, the Appellant claimed his income to be ₹4000/- per month. In his affidavit Ex.P-4 (by way of examination-in-chief), the Appellant, however, did not give his income. A co-fruit vendor Ram Kumar filed his affidavit Ex.P-1 by way of his evidence and testified that the Appellant was earning ₹4,000/- per month. Any income beyond ₹35,000/- per annum in the relevant year was subject to payment of Income Tax. Admittedly, no Income Tax Return was filed by the Appellant. The Appellant did not furnish any cogent evidence with regard to his income. The Claims Tribunal was,

therefore, justified in awarding loss of future earning capacity taking minimum wages of an unskilled worker as ₹1677/- per month.

14. There was no evidence with regard to the Appellant's future prospects. In view of the Supreme Court judgment in *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559, relied on and discussed by this Court in *Rakhi v. Satish Kumar & Ors.* (MAC. APP. 390/2011) decided on 16.07.2012, the Appellant would be entitled to an addition of 30% in his income on account of inflation to compute the loss of earning capacity.
15. In *Mohan Soni* relied upon by the learned counsel for the Appellant, the Claimant was found to have suffered 60% permanent disability on account of amputation of left leg. The Claimant was a cart puller. The Supreme Court took the loss of future earning capacity as 90% assuming that the Appellant would not be able to pull a cart or a cycle rickshaw on account of amputation of his left leg. In the instant case, the Appellant can still sell fruit on a *rehri*. He may have some difficulty in pulling the *rehri* upto the place of a hawking site. In the circumstances, the loss of earning capacity should be taken as only 50%.
16. Coming to the selection of multiplier, the Appellant's age in the MLC was mentioned as 35 years. It is urged by the learned counsel for the Appellant that the age in the MLC might have been mentioned by some person accompanying him or might have been taken by the Doctor on some assumption. In the Claim Petition, the Appellant's age has been mentioned as 21 years. As per the ration card, which was prepared in the year 1996 itself, his age is mentioned as 12 years. The disability certificate (Ex.P-5) is a more authentic document which mentions his age as 23 years in the year 1997. At the most, there could have been variation

of one or two years in the age as mentioned in the disability certificate. Thus, I would accept the Appellant's age to be definitely under 25 years on the date of the accident. The loss of earning capacity thus comes to ₹2,35,450/- (₹1677/- + 30% x 12 x 18) as against a compensation of ₹1,50,930/- awarded by the Claims Tribunal.

LOSS OF INCOME:

17. The Appellant remained admitted in Hindu Rao Hospital for 18 days and in Bhagat Hospital for 20 days. On account of amputation of his right hand, he must have taken 4-6 months to fully recover from the injury. He is, therefore, entitled to the loss of income for a period of six months which comes to ₹10062/- (₹1677/- x 6). I award this sum towards loss of income.

ATTENDANT CHARGES:

18. No evidence was produced by the Appellant that he employed any attendant to look after him. Considering that there was amputation of his right arm and the Appellant remained admitted for about 38 days, the Appellant might have engaged some attendant or some family member must have looked after him for a period of at least three months. (*Delhi Transport Corporation and Anr. v. Kumari Lalita* 22 (1982) DLT 170 (DB)).
19. I accordingly, award a sum of ₹5,000/- (₹1677/- x 3) towards gratuitous services rendered by family members.

LOSS OF AMENITIES AND PAIN AND SUFFERING:

20. The Appellant was a young boy aged 21-22 years. In *Govind Yadav v. New India Insurance Co. Ltd.* (2011) 10 SCC 683, a compensation of ₹1,50,000/- each was awarded in case of amputation of one lower limb in

an accident which occurred in the year 2004 towards pain and suffering and loss of amenities and loss of marriage prospects. Considering that in this case, the accident took place in the year 1996, I would make a provision of ₹75,000/- each under both the heads.

21. No other contention has been raised.
22. The compensation is thus recomputed as under:

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Pain and Suffering	₹50,000/-	₹75,000/-
2.	Loss of Amenities	₹ 25,000/-	₹75,000/-
3.	Expenses on Medicines, Medical Treatment, Special Diet and Conveyance	₹ 20,000/-	₹ 20,000/-
4.	Compensation on account of Permanent Disability/Loss of Earning Capacity	₹ 1,50,930/-	₹ 2,35,450/-
5.	Loss of Income(for six months)	-	₹ 10,062/-
6.	Attendant Charges	-	₹ 5,000/-
	Total	₹ 2,45,930/-	₹ 4,20,512/-

23. The enhanced compensation of ₹1,74,582/- shall carry interest @ 7.5% per annum from the date of the filing of the petition till its payment. 80% of the enhanced compensation shall be held in fixed deposit for a period of two years, four years, six years, eight years and ten years. Rest 20% along with proportionate interest shall be released on deposit.

24. The Respondent No.3 Insurance Company is directed to deposit the enhanced amount of ₹1,74,582/- along with interest in the name of the Appellant in the UCO Bank, Delhi High Court Branch within six weeks.
25. The Appeal is allowed in above terms.
26. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

AUGUST 30, 2012
pst