

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

Reserved on: 9th October, 2012

Pronounced on: 31st October, 2012

+ **MAC APP.527/2004**

A.C. ROY

..... Appellant

Through:

Mr. Sanjiv Sharma, Advocate

Versus

SANJAY KUMAR & ORS

..... Respondents

Through:

Mr.S.L. Gupta with Mr. Ram Ashray,
Advocates for the Respondent No.2
Insurance Company.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. Appellant A.C. Roy who was working as a craftsman in the Indian Army seeks enhancement of compensation of ₹2,99,320/- awarded to him by the Motor Accident Claims Tribunal (Claims Tribunal) who suffered injuries in a motor vehicle accident which occurred on 23.09.1989.
2. The Appellant suffered a compound fracture on his right foot. He proved a certificate Ex.PW1/A whereby he was placed in the lower medical category. Further, the Appellant was placed in low middle category 'BEE' permanently w.e.f. 11.01.1995 as per the certificate Ex.PW1/D. He was discharged after 16 years of service instead of 22 years. The Claims Tribunal thus awarded him compensation on account of the difference in the pension he received and the amount of salary which would have been admissible to him had he continued in service for

another six years. The relevant para of the impugned judgment is extracted hereunder:

“14. At the time of his discharge he was drawing a salary of ₹5329/- and other allowances as is evident from Ex.PW2/A. It has also come on record that he has been drawing a pension of ₹1520/- per month. Since he has not completed the remaining service of six years and if he has to be paid compensation, then this amount has to be deducted. Thus, his total per month salary comes to ₹3809/-(5329-1520), say, 3810/- per month i.e. ₹45,720/- per annum. If this amount is multiplied by 6, the same comes to ₹2,74,320/- (45,720/- x 6).

15. As far as compensation towards mental pain and agony is concerned, it has come on record that he received compound fractures on his right foot and remained admitted in army base hospital from 23.9.1989 to 9.3.1990, and further lowered in med. Category and has been debarred from promotion. He has not only suffered in terms of financial benefits but has also suffered loss of status as he was retired six years earlier of his retirement. It means he has suffered a great mental pain and agony. Thus, he is awarded an amount of ₹25,000/- towards mental pain and agony. Thus, in all petitioner is awarded an amount of ₹2,99,320/- (2,74,320/- + 25,000/-).”

3. The Appellant's grievance is that had he continued in service for 22 years, he would have been entitled to a higher pension @ ₹3,349/- per month in the year 2007 whereas on the date of the discharge on 31.03.2001, he was getting a basic pay of ₹1520/- per month. The Appellant also examined AW1 Naik Rajesh Kumar to prove the certificate Ex.AW1/1. The witness was not cross-examined as none appeared on behalf of the Respondents including the Respondent No.2 Oriental Insurance Company Ltd.
4. Admittedly, some of the component in the pension of ₹3,349/- was on account of increase in the Dearness Allowance w.e.f. 31.03.2001, that is, the date of discharge and some amount was on account of increments for

six years. It was stated that the pension of ₹1,520/- had increased to ₹2,605/- on the date the certificate was issued. Thus, there would be a difference of ₹800/- per month in the pension on account of increments. The Appellant would be entitled to be compensated for this difference, that is, ₹800/- per month. On the date of his projected retirement in the year 2007, the Appellant's age might have been 40 years and 09 months. Thus, the appropriate multiplier to award the compensation on account of difference in pension would be 14. The Appellant is entitled to difference in pension of ₹1,34,400/- (₹800/- x 12 x 14).

5. It is urged that the Appellant suffered permanent disability to the extent of 5% in relation to lower limb, as per Disability Certificate. He should have been awarded some compensation towards loss of earning capacity. As stated above, full compensation has already been awarded to the Appellant on account of loss of salary and reduction in pension. The Appellant has not brought on record as to how the fracture of both bones of right leg with 10% loss of knee and Ankle ROM (Restriction of Movement) would affect his earning capacity after his retirement. Moreover, the Appellant would have been free to work for six years and earn something although he has already been granted compensation for full loss of salary for six years by the Claims Tribunal.
6. Similarly, the Appellant has not led any evidence as to any inconvenience suffered by him on account of the disability. Thus, the Appellant would not be entitled to any compensation on account of loss of amenities in life.

7. The Appellant would be entitled to interest @ 7.5% per annum on the enhanced amount of ₹1,34,400/- w.e.f. 2007 which would have been the date of his discharge upto the date of the decision of this Appeal.
8. The enhanced amount along with interest shall be deposited by the Respondent No.2 Oriental Insurance Company Ltd. with the Claims Tribunal within six weeks.
9. Fifty percent of the enhanced compensation shall be held in fixed deposit for a period of three years; rest shall be released on deposit.
10. The Appeal is allowed in above terms.
11. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 31, 2012

pst