

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

Date of decision: 1st August, 2012

+ **MAC. APP. 352/2007**

VIJAY KUMAR Appellant

Through: Mr. Pradeep Kumar, Adv.

versus

MUKESH BHARDWAJ (SHARMA) & ORS..... Respondents

Through Ms. Neelam Singh, 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 ₹3,50,793/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the Appellant Vijay Kumar for having suffered injuries in a motor vehicle accident which occurred on 05.07.2002.
2. The finding on negligence is not disputed by the driver, owner and the Insurer. Thus, the same has attained finality.
3. To appreciate the contention raised on behalf of the Appellant, it would be appropriate to tabulate the compensation awarded by the Claims Tribunal hereunder:-

Sl.No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Loss of Earning during treatment	₹18,746/-
2.	Medical Bills	₹ 2,69,047/-

3.	Future Medical Treatment/Surgery	₹ 30,000/-
4.	Physiotherapy Charges	₹ 12,000/-
5.	Special Diet & Conveyance	₹ 6,000/-
6.	Pain and Agony	₹ 15,000/-
	Total	₹ 3,50,793/-

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

- (i) The Appellant underwent seven surgeries. One surgery for removal of the plates is yet to be performed. The compensation of ₹15,000/- awarded towards pain and suffering is very low and meager.
- (ii) The Appellant was a businessman and owned a shop in Sadar Bazar. He proved the Income Tax Return (ITR) Ex. PW-4/6 which was filed by him on 30.07.2002. The same was rejected by the Claims Tribunal illegally on the ground that the same was manipulated to get the compensation.
- (iii) The compensation awarded towards special diet, conveyance and future surgery is totally insufficient.

5. The Appeal must succeed on all the grounds.

6. Immediately after the accident, the Appellant was removed to Pentamed Hospital. On examination, the Appellant was found to have suffered fracture shaft femur (right), comminuted fracture tibia (right) and fracture shaft humerus (right). The Appellant was examined by PW-3 Dr. Pankaj Kumar Anand. With regard to the treatment and surgeries performed, PW-3 testified as under:-

“...External fixation applied in the right tibia and dynamic compression plate applied on the right humerus. It was done on 05.07.2002. Later on interlocking nailing of the right femur was done and then subsequently interlocking nailing of right tibia was done. The patient Mr. Vijay Kumar was admitted in our hospital on 05.07.2002 and discharged on 30.07.2002. He was re-admitted on 28.09.2002 and discharged on 29.09.2002. The photocopy of admit card is Ex.PW-3/2 and the photocopy of discharge certificate is Ex.PW-3/3 (original seen and returned). Another admit card dated 28.09.02 is Ex.PW-3/4 (photocopy) and the discharge certificate (photocopy) dated 29.09.2002 is Ex.PW-3/5. The estimate from the hospital with regard to the treatment issued by the hospital is Ex.PW-3/6 (original of all seen and returned). Another estimate pertaining to the hospitalization charges is Ex.PW-3/7 (photocopy, original of the same is seen and returned). In all five operations were performed on him. The first two were done on the same day i.e. 05.07.2002. Third operation was done on 21.07.2002, fourth on 08.07.2002 and fifth was done on 28.09.2002. The materials shown in Ex.PW-3/8 (collectively pages 1 to 7) were applied on patient Vijay Kumar.....”

7. The Appellant was again admitted to Pentamed hospital and surgery was performed to remove the internal locking rods from his right thigh and right leg on 15.03.2005. This fact was also testified by Dr. Pankaj Kumar Anand PW-3. He also deposed that one surgery would be performed for removal of plates and there would be expenditure of ₹25,000/- in addition to antibiotic. PW-3 denied the suggestion that the estimate of ₹25,000/- for future surgery was excessive.
8. During hearing of the Appeal additional evidence was produced by the Appellant and it was proved that the Appellant owned a shop in Sadar Bazar and that he had also filed an ITR for the Assessment Year 2001-02 on 28.07.2001 and returned an income of ₹51,810/- from the business and ₹3,200/- from other sources.

9. In *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors*, (1994) 2 SCC 176, the Supreme Court observed that 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. At the same time, a misplaced sympathy, generosity and benevolence cannot be the guiding factor for determining the compensation. The object of providing compensation is to place the claimant(s), to the extent possible, in almost the same financial position, as they were in before the accident and not to make a fortune out of misfortune that has befallen them.
10. As stated above, the Appellant remained admitted in the hospital from 05.07.2002 to 30.07.2002, from 28.09.2002 to 29.09.2002 and then on 15.03.2005.
11. 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.

12. The fact that the Appellant had to undergo seven successive surgeries would be indicative of the fact that he suffered pain right from the time of the accident on 05.07.2002 and had to suffer pain on successive surgeries. The compensation of ₹15,000/- awarded towards pain and suffering in the circumstances of the case was very meager. The same is raised to ₹60,000/-.
13. Similarly, the compensation of ₹6,000/- awarded towards conveyance and special diet was very low. In view of the long period of hospitalization and the treatment as an outdoor patient, I would award a sum of ₹10,000/- each towards special diet and conveyance.
14. The Claims Tribunal awarded a sum of ₹30,000/- towards future medical expenditure. It is urged by the learned counsel for the Appellant that the cost of medical treatment has risen tremendously during the last couple of years and sum of ₹30,000/- may not be able to take care of the surgery for removal of plates. The estimate for future surgery was given by PW-3 in the year 2006. Although the circumstances, as to why the Appellant did not undergo further surgery, have not been proved on record, but I can take judicial notice of the rise in the cost of medical treatment since the year 2006. In the circumstances, award of compensation of ₹30,000/- towards future treatment is increased to ₹50,000/-.
15. The Claims Tribunal rejected the ITR for the year 2002-03 on the ground that it was filed on 30.07.2002 i.e. 25 days after the accident. Since, by way of additional evidence the return for the previous year has also been proved by examining AW-2 Seema Kukreja, the Claims Tribunal's finding that the ITR was manipulated to get the compensation cannot be sustained. Considering that the Appellant was a young boy in his own

business, I see no reason to see an increase in the income from ₹55,000/- to ₹75,500/-.

16. The Appellant was awarded compensation for loss of income for seven months on the basis of minimum wages which was not justified. I would award compensation on the basis of his actual income as per the ITR for the year 2002-03 which would come to ₹45,200/- ($77,500/- \times 7 \div 12$) as against a compensation of ₹18,746/- awarded by the Claims Tribunal.

17. The compensation awarded is tabulated hereunder:-

Sl.No.	Compensation under various heads	Awarded by this Court
1.	Loss of Earning during treatment	₹45,200/-
2.	Medical Bills	₹ 2,69,047/-
3.	Future Medical Treatment /Surgery	₹ 50,000/-
4.	Physiotherapy Charges	₹ 12,000/-
5.	Special Diet & Conveyance	₹20,000/-
6.	Pain and Agony	₹60,000/-
	TOTAL	₹ 4,56,247/-

18. The overall compensation is thus enhanced from ₹3,50,793/- to ₹4,56,247/-.

19. The enhanced compensation of ₹ 1,05,454/- shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.

20. The enhanced compensation along with interest shall be deposited with the Claims Tribunal within six weeks and shall be released on deposit.

21. The Appeal is allowed in above terms.
22. The Appellant shall be entitled to costs throughout.
23. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

AUGUST 01, 2012
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