

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

Date of decision: 17th July, 2012

+ **MAC.APP. 230/2011**

MASTER RAHUL Appellant
Through: Mr. Navneet Goel, Adv. with
Ms. Suman N. Rawat, Adv.

versus

SHAILENDER SHARMA & ORS. Respondents
Through: Mr. Sameer Nandwani, Adv. for
R-4.

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 ₹1,13,672/- awarded to the Appellant for having suffered injuries in a motor vehicle accident which occurred on 13.10.2007.
2. The finding on negligence is not challenged by the Respondents and has thus become final between the parties.
3. At the time of the accident, the deceased was aged 12 years and was a student of 7th standard. Apart from other injuries, he suffered crush injury on his left hand resulting into amputation of fourth finger. The Medical Board of Babu Jagjivan Ram Memorial Hospital gave a Disability Certificate Ex.PW-1/28

opining the Appellant to be suffering from 25% permanent physical impairment in relation to left hand because of amputation of fourth finger of left hand with stiff hand.

4. The Claims Tribunal dealt with the aspect of permanent disability as under:-

“One finger of the left hand of the petitioner has been amputated whereas another finger is not properly working due to stiffness. In the certificate Ex.PW-1/28, the extent of disability qua the whole body is not described. After relying upon the above mentioned cited case, I am of the view that the permanent disability qua the whole body has to be treated at 10% because the 25% disability is only in respect of the left hand. Accordingly, the earning capacity of the petitioner is to be treated as having been reduced to an extent of 10%.

Petitioner was a student aged about 12 years at the time of accident. He was not earning anything, so in that situation a notional income of 15,000/- p.a. has to be calculated as per Schedule of Section 163A of Motor Vehicle Act and multiplier of 15 has to be applied.”

5. The compensation awarded is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Loss of Notional Income	₹22,500/-
2.	Medical Expenses	₹ 31,172/-
3.	Special Diet & Conveyance	₹ 10,000/-

	Charges	
4.	Pain and Sufferings, Inconvenience, Disfigurement of the hand	₹ 50,000/-
	Total	₹ 1,13,672/-

6. Following contentions are raised on behalf of the Appellant:-

- (i) The Claims Tribunal erred in taking the notional income of ₹15,000/-. The Appellant was still studying and would have studied further before seeking employment and his potential income should have been taken into consideration to award the loss of future earning capacity.
- (ii) As per the Disability Certificate Ex.PW-1/28, the Appellant suffered 25% permanent disability in respect of his left hand. The Claims Tribunal erred in awarding the loss of earning capacity only to the extent of 10% instead of 25%.
- (iii) No compensation was awarded towards the loss of amenities and the compensation awarded towards pain and suffering and disfigurement amount of ₹50,000/- is on the lower side.

7. The Appellant was a student of 7th standard and this disability was only in left hand. In the circumstances and in the absence

of any specific evidence, the Claims Tribunal was justified in taking the loss of earning capacity to be 10% vis-à-vis the whole body. The Claims Tribunal, however, fell into error in awarding the loss of earning capacity on notional income of ₹15,000/-. The Appellant was a student of 7th standard. Even if, he was not from well off family, he would have studied at least for a few years before taking employment. The loss of earning capacity, therefore, ought to have been granted on the wages at least of a Non Matriculate. He was also entitled to addition of 30% on the notional income of a Non-Matriculate on the basis of the judgment in *Santosh Devi v. National Insurance Company Ltd. & Ors., 2012 (4) SCALE 559*.

8. The compensation on account of loss of earning capacity thus would come to ₹1,02,857/- (3663/- + 30% x 12 x 18 x 10%).
9. 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.

10. The Claims Tribunal awarded a lumpsum compensation of ₹50,000/- towards the pain and suffering, inconvenience and disfigurement. The Appellant remained admitted in Anand Maya Hospital, Jahangirpuri from 3.10.2007 to 23.10.2007. He was operated on 3.10.2007. He was advised rest for a period of six weeks w.e.f. 3.10.2007. In the circumstances, I would award a compensation of ₹40,000/- towards pain and suffering.
11. The Appellant would have difficulty in holding heavy things. His marriage prospects are also affected. I separately award a compensation of ₹75,000/- towards the loss of amenities, inconvenience, disfigurement and diminishing marriage prospects.
12. No evidence was led by the Appellant that any future treatment would be needed. Considering the nature of injuries, particularly, stiffness in the left hand, he would need some physiotherapy. I award him lumpsum compensation of ₹5,000/- towards physiotherapy and future treatment.
13. The Appellant was unable to attend to his studies for at least a couple of months. I award a compensation of ₹5,000/- towards loss of studies.
14. The compensation awarded by this Court is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by this Court
1.	Loss of Notional Income	₹1,02,857/-
2.	Medical Expenses	₹ 31,172/-
3.	Special Diet & Conveyance Charges	₹ 10,000/-
4.	Pain and Sufferings, Inconvenience, Disfigurement of the hand	₹40,000/-
5.	Loss of Amenities, Inconvenience, Disfigurement & Diminishing Marriage Prospects.	₹75,000/-
6.	Physiotherapy & Future Treatment.	₹5,000/-
7.	Loss of Studies	₹5,000/-
	Total	₹ 2,69,029/-

15. The compensation is thus enhanced from ₹1,13,672/- to ₹2,69,029/-.
16. The enhanced compensation of ₹1,55,357/- shall carry interest @ 7.5 % per annum from the date of filing of the Petition till its payment.
17. Respondent No.4 United India Insurance Company is directed to deposit the enhanced compensation along with interest with the Claims Tribunal within six weeks.

18. On deposit, 80% of the enhanced compensation shall be held in fixed deposit for a period of five years. Rest shall be released to the Appellant immediately.
19. The Appellant shall be entitled to apply to the Claims Tribunal for premature release of the amount if needed for his studies or otherwise.
20. The Appeal is allowed in above terms.
21. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

JULY 17, 2012

vk