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

Date of decision: 17th August, 2012

+ **MAC. APP. No.348/2012**

SISHPAL SINGH

..... Appellant

Through: Mr. D.K. Sharma with Mr. O.S. Punia,
Advocates

Versus

MOHD. ILIYAS & ORS.

..... Respondents

Through: Mr.Fateh Pal Singh Chhabra, Advocate
for the Respondent No.2
Ms.Suman Bagga, 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 ₹7,77,430/- awarded by the Motor Accident Claims Tribunal(the Claims Tribunal) in favour of the Appellant for having suffered injuries in a motor vehicle accident which occurred on 08.08.2007.
2. In the absence of any Appeal by the driver, owner or the insurer, the finding on negligence has attained finality.
3. While dealing with the nature of injuries and the award of compensation, the Claims Tribunal held as under:

“13. The discharge summary issued by Neelkant Hospital shows that petitioner suffered crush injury of left leg with

Nonviable left leg, crush injury left hand with Nonviable ring finger, and doubtfully viable index finger. It is recorded that amputation of ring finger and index finger was done. The disability certificate shows that he was also suffered amputation of left leg through knee. The disability certificate shows that petitioner suffered 80% in relation to limb.

14. The petitioner has also exhibited the bills regarding purchase of Prosthetic leg which is for ₹1,31,000/-. It can be easily deducted (sic deduced) that petitioner must have remained out of routine work for about 5-6 months and must have required services of attendant for 2-3 months. The petitioner although deposed that he was doing the work of building constructions and was earning ₹25,000/- per month but failed to place on record any material to show that petitioner was doing the work of building constructions. The petitioner although filed photocopies of income tax return but failed to produce the original documents and further did not take any step for summoning the record or the witness from the Income Tax Department. Under these facts and circumstances minimum wages prevailing at the time of accident can be taken into consideration.

15. The disability in relation to limbs are 80%. Therefore, disability in relation to whole body can be taken to be 40%. It cannot be lost sight that because of amputation of leg and two fingers, the working capacity of petitioner must have been affected, therefore, in my opinion while calculating the earning capacity, the disability can be taken to be 40%. The loss of earning capacity due to disability can be calculated by multiplying the annual income of the petitioner with the percentage of disability and with multiplier of 14. The total loss in earning capacity on account of disability comes to ₹2,47,430/-($3682 \times 12 \times 14 \times 0.4$).

16. Keeping in view of the facts and circumstances of the matter, I consider the following to be just compensation to the petitioner:-

1. Pain and Suffering ₹80,000/-
2. Compensation for Loss of Amenities and Enjoyment ₹80,000/-
3. Special Diet & Conveyance ₹ 10,000/-
4. Compensation towards Disability ₹ 2,47,430/-
5. Attendant Charges for three months (@ ₹3000/- per month) ₹ 9,000/-
6. Cost of Prosthetic leg ₹ 1,31,000/-
7. Expenses towards Medical Bills ₹ 2,20,000/-

Total ₹ 7,77,430/-”

4. The following contentions are raised on behalf of the Appellant:
- (i) The Appellant’s income as per Income Tax Return for the A.Y. 2006-07 placed on the Claims Tribunal’s record was ₹1,02,750/-. The Claims Tribunal erred in not believing his income as per the Income Tax Return.
 - (ii) The Appellant was unable to perform his work for a period of about three years. No compensation was awarded towards loss of income.
 - (iii) The appropriate multiplier at the Appellant’s age (39 years) was ‘15’ as against ‘14’ adopted by the Claims Tribunal.
 - (iv) Future prospects were not considered while awarding compensation towards loss of earning capacity.

(v) The compensation awarded towards non-pecuniary damages, special diet and conveyance is on the lower side.

5. The Appellant claimed his income as ₹25,000/- per month. No document was produced by the Appellant to show that he was earning ₹25,000/- per month. Photocopies of the Income Tax Returns were placed on record, were not relied on by the Claims Tribunal as the originals were not produced. Original Income Tax Return for the A.Y. 2006-07 returning an income of ₹1,02,750/- was placed on the paper book along with the Appeal. The Claims Tribunal instead of rejecting the Appellant's income as per Income Tax Return, as original ITR was not produced, could have asked the Appellant to produce the original. The Appellant was paying Income Tax even after the A.Y. 2006-07. I do not find any reason to disbelieve the Income Tax Return which was filed before the date of the accident. Thus, I accept that the deceased was earning a sum of ₹1,02,750/- per annum at the time of the accident.
6. I have already extracted above the Claims Tribunal's judgment dealing with the nature of injury. The Appellant suffered crush injuries on his left leg and left hand. The Appellant's left leg had to be amputated through knee joint. Ring finger also had to be amputated. It was urged by the learned counsel for the Appellant that he (the Appellant) was himself working as a mason and, therefore, he suffered 80% loss of earning capacity. It is contrary to the record. The Appellant filed his affidavit by way of his evidence. He deposed that he was working as a building contractor. Thus, it cannot be said that the Appellant was working as a mason. As is apparent from the Claims Tribunal's judgment, the Appellant obtained a prosthetic leg. Thus, he was able to move with the

same. Section 168 of the Motor Vehicle Act, 1988(the Act) enjoins payment of award of just compensation to the victim of a motor vehicle accident.

7. In *Raj Kumar v. Ajay Kumar & Anr.*, 2011 (1) SCC 343, the Supreme Court 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.

x x x x x x x

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."

8. In this case, the Appellant did not lead any evidence as to the handicap vis-à-vis his profession. Considering that the Appellant was a building contractor, the nature of job carried out by the Appellant was mainly supervisory. Of course, he needed to move from one place to another and also had to stand or sit at the site of construction. In the circumstances, I would assess the loss of his earning capacity as 20% vis-à-vis whole body instead of 80% in relation to his limb.
9. In the absence of any evidence with regard to the future prospects, the First Respondent was entitled to an increase of 30% towards the inflation on the basis of judgment of the Supreme Court 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.
10. It is also the case of the parties that the Appellant was aged 39 years. The appropriate multiplier at this age is '15' instead of '14' selected by the

Claims Tribunal. The Appellant was a self-employed. There would be an addition of 30% towards inflation/future prospects. The loss of future earning capacity thus comes to ₹4,00,725/- (₹1,02,750/- + 30% x 15 x 20%) as against ₹2,47,430/- awarded by the Claims Tribunal.

11. The Appellant deposed that he was unable to do any work for a period of three years. No expert evidence was produced by the Appellant in this regard. Thus, I am left to make a guess work as to the loss of income taking into account the injuries suffered and the treatment received. The Appellant met with the accident on 08.08.2007. His left leg was amputated through knee joint on that very day. He was discharged from the Hospital on 14.08.2007. At the most, the Appellant would have taken six months to fully recover from the injury and to be able to attend to his work. Thus, I award him a compensation of ₹51,375/- (₹1,02,750/- ÷ 2) towards loss of income.
12. As far as non-pecuniary damages are concerned, it is not in dispute that the Appellant remained in the Hospital for one week where amputation of his left leg and amputation of his left ring finger was carried out. It is difficult to measure the pain and suffering in terms of money 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.

13. In *Govind Yadav v. New India Insurance Co. Ltd. (2011) 10 SCC 683*, in case of amputation of one lower limb, a compensation of ₹1,50,000/- was awarded towards pain and suffering and ₹1,50,000/- towards loss of amenities in life. In paras 26 and 27, the Supreme Court held thus:

“26. Admittedly, at the time of accident, the appellant was a young man of 24 years. For the remaining life, he will suffer the trauma of not being able to do his normal work. Therefore, we feel that ends of justice will be met by awarding him a sum of Rs.1,50,000 in lieu of pain, suffering and trauma caused due to the amputation of leg.

27. The compensation awarded by the Tribunal for the loss of amenities was also meagre. It can only be a matter of imagination as to how the appellant will have to live for the rest of his life with one artificial leg. The appellant can be expected to live for at least 50 years. During this period he will not be able to live like a normal human being and will not be able to enjoy life. The prospects of his marriage have considerably reduced. Therefore, it would be just and reasonable to award him a sum of Rs.1,50,000 for the loss of amenities and enjoyment of life.”

14. Thus, in *Govind Yadav* there was an unmarried boy of 24 years. The accident took place in the year 2004. In this case, the Appellant is a married person aged 39 years and the accident took place in the year 2007. In the circumstances, I make a provision of compensation towards non-pecuniary heads on the scale as awarded in *Govind Yadav*. Thus, I award a compensation of ₹1,50,000/- towards pain and suffering and ₹1,50,000/- towards disfigurement and loss of amenities of life.
15. Considering the nature of injuries, the compensation towards conveyance and special diet is raised from ₹10,000/- to ₹20,000/-.

16. The compensation awarded is tabulated hereunder:

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Pain and Suffering	₹80,000/-	₹1,50,000/-
2.	Loss of Amenities and Enjoyment	₹80,000/-	₹1,50,000/-
3.	Special Diet & Conveyance	₹ 10,000/-	₹20,000/-
4.	Compensation towards Disability	₹ 2,47,430/-	₹4,00,725/-
5.	Attendant Charges for three months (@ ₹3000/- per month)	₹ 9,000/-	₹ 9,000/-
6.	Cost of Prosthetic leg	₹ 1,31,000/-	₹ 1,31,000/-
7.	Expenses towards Medical Bills	₹ 2,20,000/-	₹ 2,20,000/-
8.	Loss of Income(six months) (₹1,02,750/- ÷2)	-	₹51,375/-
	Total	₹ 7,77,430/-	₹ 11,32,100/-

17. Thus, there is an enhancement of ₹3,54,670/- in the compensation awarded which shall carry interest @ 7.5% per annum from the date of the filing of the Petition till its payment. 75% of the enhanced amount shall be held in fixed deposit for a period of two years, four years and six years in equal proportion. Rest 25% shall be released to the Appellant on deposit.

18. The Respondent No.3 IFFCO-Tokio General Insurance Co. Ltd. is directed to deposit the enhanced compensation of ₹3,54,670/- along with interest in the name of the Appellant in UCO Bank, Delhi High Court Branch within six weeks.
19. The Appeal is allowed in above terms.
20. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

AUGUST 17, 2012
pst