

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

Date of decision: 13th September, 2012

+ **MAC APP. 297/2010**

ARUN KUMAR Appellant

Through: Mr. Amit Kumar Pandey, Adv.

versus

TATA AIG GENERAL INSURANCE COMPANY LTD. & ORS.

..... Respondents

Through: Ms. Anjali Bansal, Adv. for R-1.

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 ₹1,32,000/- awarded in favour of the Appellant for having suffered injuries in a motor vehicle accident which occurred on 25.03.2007.
2. In the absence of any Appeal by the driver, owner or the Insurance Company the finding on negligence has attained finality.
3. After the accident, the Appellant was admitted to Jai Prakash Narayan Apex Trauma Centre, AIIMS Hospital with the history of head injury, pain, swelling of both legs, left elbow, pain and swelling on right knee. There was loss of movement and loss of sensation. During investigation, he was found to have suffered fracture both bones forearm left, brachial plexus injury (left), compound comminuted fracture right elbow intercondylar.

4. He was discharged from the hospital on 22.04.2007 with the advice to follow up in OPD. He was declared to have suffered 87% permanent physical impairment in relation to his left upper limb on account of brachial plexus injury with fracture lower humerus. His average loss of muscle power in left shoulder was declared to be 96% and in hand to the extent of 100%.
5. It is urged by the learned counsel for the Appellant that the compensation awarded towards loss of future earning capacity is highly disproportionate to the nature of permanent disability. The compensation awarded towards pain and suffering is on the lower side. No compensation has been awarded towards loss of amenities, disfigurement and loss of marriage prospects. No compensation has been awarded towards loss of studies.
6. Ms. Anjali Bansal, learned counsel for the Respondent Insurance Company concedes that the compensation awarded is inadequate. She states that there was no loss of studies as the Appellant passed his Matriculation examination in the same year. The compensation awarded towards non-pecuniary damages is just and reasonable. Since the Appellant suffered injuries and permanent disability only in his left hand, the compensation awarded towards loss of future earning capacity should be marginally increased.
7. The compensation of ₹1,32,000/- awarded by the Claims Tribunal is extracted hereunder in a tabulated form:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Pecuniary Loss	₹72,000/-
2.	Loss of Studies	₹ 5,000/-
3.	On account of Medicines	₹ 10,000/-
4.	On Special Diet	₹ 5,000/-
5.	On Conveyance	₹ 5,000/-
6.	On account of Pain & Suffering	₹ 35,000/-
	Total	₹ 1,32,000/-

8. The trend of the Superior Courts is to award full and fair compensation. In the case of *Raj Kumar v. Ajay Kumar & Anr.*, 2011 (1) SCC 343, the Supreme Court observed that the object of awarding damages is to make good the loss suffered as a result of the wrong done as far as money can do in a fair, reasonable and equitable manner. 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.

9. 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.”

10. 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.”

11. In *Kavita v. Deepak & Ors.*, Civil Appeal No.5945/2012 decided on 22.08.2012, the Supreme Court laid down that an attempt should always be made to award adequate compensation not only for physical injury and treatment but also for the loss of earning and inability to lead a normal life and enjoy the amenities, which would have been enjoyed but for the disability caused due to the accident.
12. In *Raj Kumar* the Supreme Court reiterated the heads under which compensation is awarded in personal injury cases as under:-

“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.”

13. Now, I turn to the facts of this case.
14. At the time of the accident, the Appellant was a young boy of 15-16 years, studying in 9th standard. The Appellant did not lead any evidence to prove his loss of earning capacity. At the same time, a perusal of the disability certificate would reveal that the Appellant's left hand became totally powerless, in other words it is only an artificial limb as there is loss of muscle power in the left shoulder to the extent of 90% and in the left hand to the extent of 100%. In most of the activities we need equal assistance of the left hand.
15. As stated earlier, at the time of the accident, the Appellant was a student of 9th standard who completed his Matriculation. At this stage, it would be too early to say as to what profession would he pursue? In the circumstances, I would take the loss of earning capacity to be 30% in respect of whole body and would award compensation on the salary of a Matriculate with an addition of 30% on the basis of *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.

16. The loss of earning capacity thus comes to ₹3,33,927/- (3964/- + 30% x 12 x 18 x 30%) as against a compensation of ₹72,000/- awarded by the Claims Tribunal.
17. As stated earlier, the Appellant's left hand is totally gone. It is just like an artificial limb. No compensation was awarded to the Appellant towards loss of amenities, disfigurement and diminished marriage prospects. Keeping in view that the accident occurred in the year 2007, I would make a provision of ₹75,000/- under this head.
18. The Appellant remained admitted in Jai Prakash Narayan Apex Trauma Centre, AIIMS Hospital for a period of about one month. He remained an outdoor patient for a period of about six months. The compensation of ₹35,000/- awarded towards pain and suffering is raised to ₹50,000/-.
19. PW-2 Smt. Sushila Devi's testimony that the Appellant could not attend to the school for about six months and after that he was not regular in the school, I would raise the amount of ₹5,000/- to ₹25,000/- towards loss of studies.
20. The compensation of ₹5,000/- each awarded towards special diet and conveyance is raised to ₹10,000/- each.
21. The overall compensation awarded is re-computed as under:-

Sl. No.	Compensation under various heads	Awarded by this Court
1.	Loss of Earning Capacity	₹3,33,927/-
2.	Loss of Amenities, Disfigurement & Diminished Marriage Prospects	₹ 75,000/-

3.	Pain and Suffering	₹ 50,000/-
4.	Loss of Studies	₹ 25,000/-
5.	On account of Medicines	₹ 10,000/-
6.	On Special Diet	₹ 10,000/-
7.	On Conveyance	₹ 10,000/-
	Total	₹ 5,13,927/-

22. The compensation is thus enhanced by ₹3,81,927/- which shall carry interest @ 7.5% per annum from the date of filing of the Petition till its deposit with the Claims Tribunal.
23. Respondent No.1 Tata AIG General Insurance Company Limited is directed to deposit the enhanced compensation along with interest with the Claims Tribunal within six weeks.
24. Eighty percent of the enhanced compensation shall be held in fixed deposit in any Nationalised Bank by the Claims Tribunal as per the Appellant's convenience. 20% shall be released to him on deposit.
25. The Appellant shall be entitled to premature release of the compensation for his higher studies or for any other purpose to the satisfaction of the Claims Tribunal.
26. The Appeal is allowed in above terms.
27. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

SEPTEMBER 13, 2012

vk