

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

Date of decision: 10th April, 2012

+ **MAC.APP. 81/2012**

SUNIL KUMARI Appellant
Through: Mr. S.N. Parashar, Advocate
versus

MANOJ & ORS. Respondents
Through: Mr. Sameer Nandwani,
Advocate for R-3.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

**MAC.APP. 81/2012 and CM APPL. Nos.1251/2012 (delay),
1250/2012 (additional evidence)**

1. Issue notice to the Respondents.
2. Mr. Sameer Nandwani, Advocate accepts notice on behalf of the third Respondent.
3. The Insurance Company has not filed any Appeal to challenge the finding on negligence or liability.
4. Delay of 351 days in re-filing the Appeal is condoned for the reasons as stated in the application.
5. CM APPL. No.1251/2012 stands disposed of.

CM APPL. 1250/2012 (Additional Evidence)

6. The Appellant seeks production of additional evidence in the shape of a Certificate of Graduation issued by the Urdu Academy, Aligarh, U.P. There is not even a whisper as to why this Certificate could not be produced by the Appellant before the Claims Tribunal. No case has been made out for the grant of permission to lead additional evidence.
7. The application is dismissed.

MAC.APP. 81/2012

8. The Appeal is for enhancement of compensation of ₹ 6,47,987/- awarded to the Appellant for having suffered injuries in a motor accident which occurred on 15.04.2008.
9. The Appellant suffered multiple fractures on her right ankle and her foot was crushed. She remained admitted in LNJP Hospital from 16.04.2008 to 14.05.2008 where debridement with external fixation was done under general anesthesia. Skin grafting was done at the time of surgery. Plastic surgery was done on 19th April, 1st May and 12th May. The Appellant was then admitted in Satyawadi Raja Harish Chandra Hospital, Narela from 15.05.2008 to 22.05.2008. The Appellant was then admitted in St. Stephens Hospital from 22.05.2008 to 07.07.2008 where debridement of wounds and toe amputation and readjustment of fixator was done on 26.05.2008. The Appellant was issued a Disability Certificate Ex.PW-1/22 on 18.06.2009 declaring her having 52% permanent physical

impairment in relation to her left lower limb.

10. During inquiry before the Claims Tribunal, the Appellant claimed that she was running a Chemist Shop in the name and style of M/s. Nirmal Medicos in Village Sannoth and was earning ₹ 1.5 lacs per annum.
11. In the absence of any documentary evidence for running a Chemist Shop or holding of a Pharmacy Certificate, the Claims Tribunal declined to believe that the Appellant was running any Chemist Shop. The Claims Tribunal rejected the Income Tax Return showing income of ₹ 1.5 lacs as this was a solitary Return filed by the Appellant filed after three months of the accident.
12. The Claims Tribunal awarded a compensation of ₹ 6,47,987/- which can be tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
a)	Loss of Income	₹3,52,600/-
b)	Medical Expenses	₹ 60,387/-
c)	Pain and Sufferings Etc.	₹1,50,000/-
d)	Support System	₹ 65,000/-
e)	Special diet & Conveyance Charges	₹ 20,000/-
	Total	₹ 6,47,987/-

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

- (i) The compensation awarded towards loss of earning capacity was low. The Appellant suffered 52% permanent disability which, argued the learned counsel, reduced the earning capacity to almost nil. In any case, loss of earning capacity should have been taken as 52% as against 30% taken by the Claims Tribunal.
- (ii) No compensation was awarded towards loss of amenities in life.
- (iii) No compensation was awarded towards attendant charges in spite of the fact that the Appellant remained admitted in the hospital for a period of about three months.
- (iv) The compensation awarded towards special diet and conveyance is inadequate.

14. On the loss of future earning capacity, the Claims Tribunal held as under:-

“....Petitioner has proved disability certificate Ex. PW1/22 through PW-2 an orthopedics surgeon which shows that she has suffered 52% permanent disability in relation to left lower limb. There is an amputation of left mid foot with deformity of left ankle joint. PW-2 also stated that there is no scope of implant of any artificial limb and petitioner is able to walk only with walker or some support system. Photographs of petitioner lying on the record point out how badly the conditions of her both

legs are. However this disability certificate does not point out the extent of disability in respect of whole body.

Petitioner has alleged that she was running medicine shop and was earning sum of Rs. 1.5 lakhs per annum but she has not produced any qualification certificate of chemist. She even has not produced on record the license issued by Drugs and Cosmetics Department authorizing her to run the chemist shop. Simple one income tax return Ex. PW1/21 filed on 21-5-2008 after the date of accident itself cannot be relied upon to ascertain the profession/work of the petitioner as well as her earnings especially when she has not produced any earlier or subsequent tax return to find out what was her earnings from the shop and whether her earning has reduced subsequently or not. There is also a doubt about the correctness of the income tax return because in the same, income is shown having coming from one 'Shalini Medicos' Lampur Road, Narela but petitioner in her petition as well as in affidavit of evidence describe running of 'Nirmal Medicos' situated in village Sannoth. In such situation, it is not possible for this court to believe that she is a qualified chemist, running chemist shop and was earning Rs. 1.5 lakhs as alleged. There is nothing on record to point out that due to accident she is now suffering losses from the alleged chemist shop. Her income tax return is liable to be treated as unreliable and apparently manipulated document. Hence the earning income of the petitioner has to be taken into account according to the basic minimum wages scale.

This court is concerned with the effect of the permanent disability on the earning capacity of the injured and has to find out the effect of such disablement of the limb on the functioning of the entire body. Normally where disability certificate does not prescribe the extent of disability qua the whole body but mention it in relation to a particular limb, then in that situation the extent of

disability as shown in certificate is reduced to half or near to half to treat it qua the whole body. Accordingly after relying upon the latest decision of Supreme Court given in case Raj Kumar vs. Ajay Kumar, Civil Appeal no. 8981/2010 decided on 18-10-2010, I deem it proper to treat this disability to an extent of 30% only for determination of compensation in respect of loss of future earning capacity.

The case law cited by counsel for petitioner Rayapati Venkateshwar Rao vs. Mantai Sambasiva Rao 2001 ACJ 2105 (AP) can be distinguished from the facts of the present case because in this cited case, injured was a cleaner of a truck who had become incapacitated to do same work again so his permanent disability to an extent of 25% was treated as 100% in order to assess loss of future earnings. Here in the present case, though the work of petitioner in running medicine shop is found not correct but even if it is presumed that she was running medicine shop then still also petitioner can do the same work of sale of medicines while sitting on the counter and has not been incapacitated to do this work at all. Accordingly her working capacity is deem to have been reduced to an extent of 30% only due to permanent disability but not totally extinguished. The submission made by counsel for petitioner to treat this disability minimum to an extent of 52% if not 100% as shown in certificate is liable to be rejected.

Similarly the case law Jitender Kumar vs. Virender Singh MAC.APP no. 43/2009 decided on 2-2-2010 by Delhi High Court is distinguishable from the present facts and circumstances of the case as in this cited matter, there was an amputation of right leg below knee and disability was found 70% which was treated as 50% as of whole body due to loss of job and acquiring of HIV during blood transfusion. Here in the present matter there is no

such amputation and disability is also to an extent of 52% only.

The another cited decision of Delhi High Court given in National Insurance Co. Ltd. vs. Ranjit Singh FAO no. 246/07 decided on 26-11-2009 is not applicable at all as this case was in respect of Workman Compensation Act and not in respect of Motor Vehicles Act.

As per law, extent of permanent disability has to be treated at par with the death of the person while computing the compensation. Petitioner in her petition has described her age as 32 years at the time of accident. Her matriculate certificate placed on record corroborate this age. Accordingly after relying upon the decision of Supreme Court given in case Sarla Verma vs. DTC 2009 ACJ 1298, multiplier of 16 has to be applied on the yearly income of the petitioner.

Petitioner on the basis of her application at the final stage of the case was permitted to place on record her educational qualification certificates. As per certificates placed on record, it is revealed that she had done matriculate and one certificate course in Urdu language. She though has produced one admission card for CMC & ED course but there is no certificate that she passed this course. Petitioner has not brought on record any rule to point out that the certificate course of Urdu language is treated as equivalent to graduation. Accordingly petitioner has to be treated as under graduate and falls in category of matriculate worker under minimum wages rates.

Since accident took place on 15-4-2008 so at the relevant time in view of minimum wages schedule, matriculate worker was deem to be earning Rs. 4,081/- per month. Accordingly the deemed monthly income of Rs. 4,081/- has to be taken into consideration to assess the loss of

earning capacity of the petitioner. Delhi High Court also in The New India Assurance Co. Ltd. vs. Raja Ram MAC.APP no. 175/2006 decided on 25-8-2009 ordered to consider the future increase on minimum wages also due to inflation and rise in price index so while applying the formula given in this case, the net income at Rs. 6121.50 paisa per month (Rs. 4,081 + 50%) is assessed.

According to the judgment of Delhi High Court in Bimla vs. Gopal MAC.APP no. 1028/2006 decided on 22-3-2010 no deduction is permissible towards the personal expenses in injury cases. Accordingly petitioner is entitled to sum of Rs. 3,52,598. 40 paisa on account of loss of income as per this formula (Rs. 6121.50 paisa x 12 x 16 x 30%). The round figure in respect of loss of earning capacity comes to Rs. 3,52,600/-.”

15. The Claims Tribunal rightly disbelieved the income of ₹ 1.5 lacs per annum claimed by the Appellant as Ex.PW-1/21 was the solitary ITR filed on 21.05.2008 after the date of the accident. It is not a case where the Appellant started earning only in the year of the accident. There was no evidence whatsoever to show that the Appellant was a qualified Pharmacist or that she was running a Chemist shop. In the circumstances, the Claims Tribunal rightly took the minimum wages of a Matriculate to compute the loss of earning capacity.
16. 50% addition in the minimum wages was, however, not permissible in view of the judgment of this Court in *Dhaneshwari & Another v. Tajeshwar Singh & Others*, MAC. APP 997/2011 decided on 19.3.2012, where after noticing the Judgments of this Court in *Smt. Anari Devi v. Shri Tilak Raj &*

Anr., II (2004) ACC 739; (2005 ACJ 1397), National Insurance Co. Ltd. v. Pooja & Ors., II (2006) ACC 382 (2007 ACJ 1051), Om Kumari & Ors. v. Shish Pal & Ors, 140 (2007) DLT 62, Narinder Bishal & Anr. v. Rambir Singh & Ors., MAC APP. 1007-08/2006, decided on 20.02.2008, New India Assurance Co. Ltd. v. Vijay Singh MAC APP. 280/2008 decided on 09.05.2008; Oriental Insurance Company Limited v. Smt. Rajni Devi & Ors. MAC APP.286/2011 decided on 06.01.2012; Smt. Gulabeeya Devi v. Mehboob Ali & Ors. MAC APP.463/2011 decided on 10.01.2012 and IFFCO TOKIO Gen. Ins. Co. Ltd. v. Rooniya Devi & Ors. MAC APP.189/2011 decided on 30.01.2012 and Division Bench Judgments of this Court in Delhi Transport Corporation and Anr. v. Kumari Lalita 22 (1982) DLT 170 (DB) and Rattan Lal Mehta v. Rajinder Kapoor & Anr. II (1996) ACC 1 (DB), this Court has held that in view of Rattan Lal Mehta (supra) increase in minimum wages cannot be given on account of future inflation.

17. The Claims Tribunal observed that the photographs of the Appellant produced during inquiry clearly depicted that the condition of both the legs was very bad. The Appellant was unable to move except with the help of a walker or some support system. Since the Appellant's case that she was running a Chemist Shop was disbelieved and she is being granted compensation on the basis of minimum wages, in my view, the functional disability would be considered to be 52%

considering the condition of both her legs.

18. The compensation on account of loss of future earning capacity would come to ₹ 4,07,447/- (4081/- x 12 x 16 x 52%).
19. It is true that no compensation specifically under the head of loss of amenities has been granted in favour of the Appellant. However, compensation towards pain and suffering etc. amounting to ₹ 1,50,000/- has been awarded. In my view, this takes care of compensation towards loss of amenities in life. Considering the nature of injuries suffered, it can be said that a compensation of ₹ 50,000/- was towards pain and suffering and ₹ 1,00,000/- was towards loss of amenities in life.
20. As stated earlier, it is proved on record that the Appellant remained admitted in various hospitals for a period of about three months. She needed at least another three months to recover from the injuries. She was therefore entitled to be paid compensation towards attendant charges for six months. No evidence was led by the Appellant to prove that she engaged any particular person as an Attendant and paid him/her any salary. Even if, some of the Appellant's family member rendered gratuitous services, the Appellant would be entitled to compensation for the same. In *Delhi Transport Corporation and Anr. v. Lalita AIR 1981 Delhi 558* the Division Bench of this Court held that the victim is entitled to compensation for the

value of services rendered by a family members. Relevant part of the report is extracted hereunder:-

“.....A wrong doer cannot take advantage of this ‘domestic element’. If the mother renders service to her, instead of a nurse, it is right and just that she should recover compensation for the value of the services that the mother has rendered to her. Mother’s services were necessitated by the wrong doing and the injured should be compensated for it. (Cunnigharn v. Harrison 3 All E.R. 463) The services of a wife and mother are worth more than those of a house-keeper because she is in constant attendance and does many more things than a house-keeper. (Regan v. Williamson (1976) 2 All E.R. 241).”

21. The minimum wages of an unskilled worker on the date of the accident were ₹3633/- which is rounded off to ₹ 3650/-. The Appellant would thus be entitled to compensation of ₹ 21,900/- (3650/- x 6) for Attendant charges.
22. The compensation of ₹20,000/- was awarded towards special diet and conveyance charges. In the absence of any evidence as to the amount spent on special diet and conveyance, it cannot be said that award of ₹20,000/- was on the lower side. The Appellant therefore is not entitled to any compensation under this head.
23. The compensation awarded is re-computed as under:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
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a)	Loss of Income	₹3,52,600/-	₹4,07,447/-
b)	Medical Expenses	₹ 60,387/-	₹ 60,387/-
c)	Pain and Sufferings Etc.	₹1,50,000/-	₹50,000/-
d)	Support System	₹ 65,000/-	₹ 65,000/-
e)	Special diet & Conveyance Charges	₹ 20,000/-	₹ 20,000/-
f)	Loss of Amenities in Life	-	₹ 1,00,000/-
g)	Attendant Charges	-	₹ 21,900/-
	Total	₹ 6,47,987/-	₹ 7,24,734/-

24. The compensation thus stands enhanced from ₹6,47,987/- to ₹ 7,24,734/-. The enhanced compensation of ₹ 76,747/- shall carry interest @ 7.5% per annum from the date of filing of the Petition till the date of payment.
25. Respondent No.3 Reliance General Insurance Company Limited is directed to deposit the enhanced compensation along with interest within a period of six weeks with the Registrar General of this Court which shall be released to the Appellant immediately on deposit.
26. The Appeal is allowed in above terms.
27. No costs.

(G.P. MITTAL)
JUDGE

APRIL 10, 2012
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