

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

Date of decision: 16th October, 2012

+ **MAC. APP. 613/2005**

VEER SERVERKAR Appellant
Through: Ms. Aruna Mehta, Adv.

versus

SHRI RAVAT SINGH & ORS. Respondents
Through: Mr. Yashpal Rangi, Adv. for R-2 & 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 Appellant Veer Serverkar seeks enhancement of compensation of ₹18,000/- awarded to him for having suffered injuries in a motor vehicle accident which occurred on 23.04.1996.
2. In the absence of any Appeal by the driver and the owner, the finding on negligence has attained finality.
3. The Appellant suffered fracture of spine at C5-6-7 and D-7-8 level and fracture of right elbow. Immediately after the accident, the Appellant was removed to Civil Hospital, Rohtak and was then shifted to St. Stephens Hospital, Delhi.
4. In the absence of any evidence with regard to expenditure on the treatment, the Claims Tribunal awarded compensation of ₹5,000/-

towards treatment; ₹1,000/- towards special diet, conveyance and Attendant charges and ₹10,000/- towards pain and suffering.

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

- (i) The compensation awarded was very niggardly. The Appellant remained under treatment of Dr. B.C. Jain for 7½ years. The Claims Tribunal was not justified in discrediting the treatment under Dr. B.C. Jain.
- (ii) The Claims Tribunal discredited the disability certificate Ex.PW-7/11 issued by Dr. B.C. Jain.
- (iii) The compensation awarded towards pain and suffering, conveyance, special diet and Attendant charges is on the lower side.

6. Section 168 of the Motor Vehicles Act, 1988 (the Act) enjoins just compensation. In *General Manager, Kerala Road Transport Corporation, Trivandrum v. Susamma Thomas & Ors.*, (1994) 2 SCC 176, the Supreme Court held as under: -

“5.....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'. All this means that the sum awarded must be fair and reasonable by accepted legal standards.”

7. While dealing with the injuries suffered by the Appellant and the treatment received by him, the Claims Tribunal observed as under:-

“42. The petitioner Veer Sarvarkar, has appeared as PW7 and has deposed that he has suffered injuries on his head and fracture of right hand and back bone. He was taken to Civil Hospital Rohtak, from where, he was taken to St. Stephens Hospital. His treatment continued for about one and half years from private doctors and his medical treatment papers are Ex.OW-7/1 to Ex.PW-7/8. The MLC shows that he had abrasion and swelling on his left ankle and had injuries on his right shoulder. The nature of the injuries cannot be made of from the said MLC. The petitioner has deposed himself that after he got first aid from St. Stephens Hospital he took discharge as he had to attend last rites of his wife who had died in the accident. The document Ex.PW-7/1 is the discharge card of Rohtak Medical College which shows that petitioner was admitted in the hospital on 23.4.96 and was discharged on 24.4.96 and was advised to take medicines for 40 days. He was also referred for X ray of wrist and chest and dorsal spine and skull. As per the prescription Ex.PW-2/3, there was tenderness found D3-4-5-6. As per MRI report of survival spine on 26.4.96 of Diwan Chand Satya Pal Aggarwal Imaging Research Centre Ex.PW-7/5 there is a compression fracture of slight anterior wedging of D2 Vertebral body. There was mild to moderate canal compromise at this level as a result of retroposed inferior edge of the vertebral body which is indenting upon the spinal cord. Mild anterior indentations upon the thecal sac is also noted as C5-6-7 and D7-8 level, which is appear due to postriorly bulging intervertebral disc. The X-ray report of right elbow Ex.PW-7/7 shows that there was fracture of neck of radius. The petitioner had to visit the Safdarjung Hospital and as per his OPD card Ex.PW-7/4, on 25.4.96 and he was found to have fracture of right radius and was advised to wear soft convical collar and to continue with medicines as prescribed.

43. The X ray of the petitioner was done on 19.11.03 from Dharav Diagnostic Centre & in its report Ex.PW-7/8, it was found that there was mild anterior wedging of D2 Vertibral body and lower cervical vertebra show ostesphytes and the impression: cervical spondylosis with post traumatic wedging of D2.

44. It is now important to refer to the testimony of PW2 Dr. B.C. Jain, who has deposed that Petitioner Veer Savarkar, had remained under his treatment from May 96 till November 03. To

corroborate this, he has proved his prescriptions which are Ex.PW-2/1 to PW-2/9. First and foremost, the petitioner has nowhere mentioned in his petition that he was under the treatment of Dr. B.C. Jain; all he had mentioned was that he had also taken his treatment from private doctors. It is also stated by him that his treatment continued till the date of filing of petition. In his testimony as PW7, he has deposed that he had continued with his treatment for about one and half years from private doctors and the treatment record are Ex.PW-7/1 to Ex.PW-7/8. But there is no evidence by him that he had ever remained under the treatment of Dr. B.C. Jain. Moreover, according to him, he took the treatment for about one and half year while as per Dr. Jain his treatment continued till November 03, which is an inherent contradiction in the testimony of the two witnesses. Not only this, the medical record which has been proved by the petitioner as Ex.PW-7/1 to Ex.PW-7/8 pertains to Safdarjung hospital. The petitioner has not referred to the medical prescriptions Ex.PW-2/1 to Ex.PW-2/9 which has been proved by Dr. B.C. Jain. Dr. B.C. Jain may have deposed that petitioner have remained under his treatment but this fact is not proven by the petitioner himself. The prescriptions Ex.Pw-2/1 to Ex.PW-2/9 seems to have been prepared in one instance as none of the prescriptions are folded nor do they seem to have to be handled over a period of time. It appears that the prescriptions Ex.PW-2/1 to Ex.PW-2/9 are fabricated. The petitioner has not been able to prove that he remained under treatment till November 03 under the treatment of Dr. B.C. Jain.

45.It is relevant to refer to the permanent disability certificate Ex.PW-7/11, which has been issued by Dr. B.C.Jain. In the said certificate, as well, it is mentioned that the petitioner was treated at Rohtak PGI and St. Stephens Hospital, Delhi, and there is no mention in the said certificate that the petitioner had ever remained under his treatment. The petitioner has thus, not been able to prove that he ever remained under the treatment of Dr. Jain or that his treatment continued till November 03. As per his own testimony, his treatment continued for about one and half years. The petitioner himself has deposed that he does not have any medical bills though, he has deposed that he has spent ₹40,000/- on his medicines and doctors. There are no medical bills except Ex.PW-7/7, which is in the sum of ₹450/- for the X ray done at Diwan Chand Satya Pal Aggarwal X-Ray Clinic which

have been placed on record. The petitioner had also got his MRI and X ray done; considering the nature of injuries, it can be presumed that the petitioner would have spent about ₹5,000/- on his treatment. He is awarded a sum of ₹5,000/- towards his medical treatment.”

8. First of all, I may mention that the Court has to keep in mind that the compensation has to be awarded in respect of the injuries suffered on the date of the accident. The Claimant would be entitled to interest if there is delay in the disposal of the Claim Petition for one reason or the other.
9. The Claims Tribunal noticed the apparent contradictions in the testimony of the Appellant and PW-2 Dr. B.C. Jain. The disability certificate obtained by the Appellant from a Private Medical Practitioner could not be looked into unless a reasonable explanation was given for not producing a medical certificate from the doctor who examined him and treated him in St. Stephens Hospital as also by the medical board constituted by the various Govt. hospitals for issuance of the disability certificate.
10. At the time of the accident the Appellant was 55 years. He was self-employed person dealing in sewing machines. He had returned the income of ₹1,20,000/- in the AY 1996-97. The Appellant suffered fracture of the wrist and the injury on his spine. It can reasonably be presumed that he must have taken at least three months to recover from the injuries. The Appellant would be entitled to a sum of ₹30,000/- towards loss of income.
11. The Appellant would have also needed an Attendant to look after him for a period of about three months, even if the gratuitous services were rendered by the some or the other of his family members. In *Delhi*

Transport Corporation and Anr. v. Lalita AIR 1981 Delhi 558, a Division Bench of this Court held that a victim cannot be deprived of compensation towards gratuitous services rendered by some of the family members for the benefit of the tortfeasor.

12. Even if, the accident took place in the year 1996, the award of compensation of ₹10,000/- towards pain and suffering and ₹1,000/- each towards special diet, conveyance and Attendant charges are very low. The same is enhanced as under:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Treatment	₹5,000/-	₹5,000/-
2.	Pain and Suffering	₹ 10,000/-	₹ 20,000/-
3.	Special Diet	₹ 1,000/-	₹ 5,000/-
4.	Conveyance	₹ 1,000/-	₹ 5,000/-
5.	Attendant Charges @ ₹1,000/- for three months	₹ 1,000/-	₹ 3,000/-
6.	Loss of Income	--	₹ 30,000/-
	Total	₹ 18,000/-	₹ 68,000/-

13. Thus, there is an overall enhancement of ₹50,000/- which shall carry interest @ 7.5% per annum from the date of filing of the petition till its payment.
14. Respondent Haryana Roadways is directed to deposit the enhanced compensation along with interest with the Claims Tribunal within six weeks.

15. This accident took place almost 16 years ago, the Appellant would have now crossed the age of 70 years. In the circumstances, 50% of the enhanced compensation shall be released to him on deposit. Rest 50% shall be held in fixed deposit for a period of one year.
16. The Appeal is allowed in above terms.
17. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 16, 2012
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