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

Date of decision: 6th December, 2012

+ **MAC. APP. 659/2005**

MANJEET SINGH Appellant

Through: Mr. Piyush Sharma, Advocate.

Versus

KAILASH KUMAR & ORS. Respondents

Through: Mr. A.K. Soni, Advocate for the
Respondent No.3 Insurance Co.

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 ₹3,87,776/- 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 21.08.1997.
2. In the absence of any Appeal by the driver; the owner or the Insurance Company; the finding on negligence has attained finality.
3. In the instant case, the Appellant suffered fracture of his right arm, right leg and head injuries. On account of the head injuries, the Appellant suffered mild mental retardation. He was declared to have suffered 40% permanent disability by the Medical Board of Safdarjung Hospital vide disability certificate Ex. PW-3/1.
4. The Claims Tribunal awarded a compensation of ₹ 3,87,776/- which is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Medical Bills	₹ 3,440/-
2.	Conveyance	₹ 10,000/-
3.	Special Diet	₹ 10,000/-
4.	Loss of Earning	₹ 66,000/-
5.	Loss of Future Earning	₹ 2,13,336/-
6.	Pain & Suffering	₹ 50,000/-
7.	Future Treatment	₹ 25,000/-
8.	Attendant Expenses	₹ 10,000/-
	Total =	₹ 3,87,776/-

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

- (i) The Appellant suffered mild mental retardation. He is unable to carry out any work. He should have been awarded compensation on 100% loss of earning capacity; the Claims Tribunal erred in awarding loss of earning capacity on the basis of the Minimum Wages of an un-skilled worker. Since the Appellant was a student of 11th standard, he should have been awarded the compensation at least on the basis of Minimum Wages of a Matriculate.
- (ii) Compensation of ₹ 10,000/- towards attendant charges was on the lower side.

(iii) No compensation was awarded towards loss of amenities in life.

6. On the other hand, learned counsel for Respondent No.3 Insurance Company urges that the compensation awarded is just and reasonable and does not call for any enhancement.

LOSS OF FUTURE EARNING CAPACITY

7. I have before me the Trial Court record. Immediately after the accident, the Appellant was removed to the Safdarjung Hospital. PW-1 Dr. Karam Chand, Senior Neuro Surgeon, Safdarjung Hospital, was one of the doctors who immediately attended to him. He testified that the Appellant was admitted to the Hospital in unconscious state since the time of injury. The patient was moving his body in the state of unconsciousness. He testified that his (the Appellant) CT Scan revealed extradural haematoma in his left frontal region. He (PW-1) testified that the patient was restless and pulled out his urinary catheter. Because of this problem, a catheter had to be inserted in the lower part of the abdomen by surgical procedure. He stated that the patient (the Appellant) remained under treatment with him till 08.12.1998. Thus, as per PW-1, the Appellant was an indoor patient for a period of 16 days and was an outdoor patient for about one year and four months.
8. PW-9 Dr. Ranjan Kumar Wadhwa is one of the doctors who constituted the Medical Board to assess the Appellant's disability. He testified that the Appellant was found to be having post head injuries mild mental retardation and the disability was found to be permanent and assessed to be 40%. He proved the disability certificate Ex. PW-9/1.
9. It is urged by the learned counsel for the Appellant that on account of the mild mental retardation, the Appellant is unable to carry out any work

and thus, his disability should be taken as 100%.

10. I would not agree with the learned counsel for the Appellant.
11. PW-9 Dr.Ranjan Kumar Wadhwa was categorical that it was a case of mild mental retardation resulting in 40% permanent disability. Thus, the Claims Tribunal rightly took the loss of earning capacity as 40% only. It, however, erred in awarding the loss of future earning capacity on the basis of Minimum Wages of an un-skilled worker whereas it was established that the Appellant was a student of 11th standard at the time of the accident. The Claims Tribunal made an addition of 50% towards inflation, it would be only 30% on the basis of the report of the Supreme Court in *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559.
12. Thus, the loss of future earning capacity comes to ₹ 2,50,698/- (₹ 2232/- + 30% x 12 x 18 x 40%) as against ₹ 2,13,336/-.

ATTENDANT CHARGES

13. I have already observed above that the Appellant was admitted in the Hospital in a very precarious condition. His condition was such that he even pulled out the urinary catheter because of the restlessness. The Appellant remained under treatment of Senior Neuro Surgeon in Safdarjung Hospital till 08.12.1998. Because of the head injuries and initial phase of unconsciousness, the Appellant could not be left unattended. The award of lump sum ₹ 10,000/- towards attendant charges was on the lower side.
14. Jai Singh (PW-3) the Appellant's father deposed that he used to be on night duty and therefore, one Sushil Kumar was employed as an attendant on a monthly salary of ₹ 3,000/-. Sushil Kumar was not produced. The salary paid to attendant seems to be higher in any case even if gratuitous

services are rendered by one or the other family member, the Appellant cannot be denied compensation for the benefit of the tortfeasor.

15. I am supported in this view by a judgment in *Delhi Transport Corporation and Anr. v. Kumari Lalita* 22 (1982) DLT 170 (DB), where it was held as under:

“(33) Counsel for the Corporation argued that since Lalita is being looked after by her mother compensation ought to be reduced. We do not agree. In the case of Lalita the main question is of future care. Today she is being helped by her mother. But that does not mean that she is not to be compensated for services rendered to her. A legal agreement between mother and daughter is not necessary to claim compensation. We cannot deduct what is described as the 'domestic element' from the cost of care. 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. (Cunnigham v. Harrison (1973) 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)”.

16. The Minimum Wages of an un-skilled worker at the time of the accident were ₹ 1,784/-. I would award a compensation of ₹ 28,544/- (₹1,784/- x 16) towards attendant charges as against a lump sum compensation of ₹ 10,000/- awarded by the Claims Tribunal.

LOSS OF AMENITIES IN LIFE

17. The Appellant has suffered permanent mild mental retardation. He had not been awarded any compensation towards loss of amenities in life. Because of the mild mental retardation, the Appellant would be prohibited from riding a bicycle or a two-wheeler. He would not be permitted to swim. He would have some difficulty in day to day working.

The Claims Tribunal ought to have awarded some compensation towards loss of amenities in life. In the facts and circumstances of the case, I would make a provision of ₹ 25,000/- under this head.

LOSS OF INCOME

18. The Claims Tribunal awarded a compensation to the extent of 40% loss of earning capacity and also loss of earning for a period of seven years. The Appellant remained under treatment only for 16 months. No expert opinion was led that after 16 months he could not carry out any work at all. In the circumstances, the loss of income could have been awarded only for a period of 16 months. The compensation towards loss of income is thus reduced from ₹ 66,000/- to ₹ 35,808/- (2238 x 16)
19. No other contention has been raised on behalf of the Appellant.
20. The compensation is recomputed as under:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Medical Bills	₹ 3,440/-	₹ 3,440/-
2.	Conveyance	₹ 10,000/-	₹ 10,000/-
3.	Special Diet	₹ 10,000/-	₹ 10,000/-
4.	Loss of Earning	₹ 66,000/-	₹ 35,808/-
5.	Loss of Future Earning	₹ 2,13,336/-	₹ 2,50,698/-
6.	Pain & Suffering	₹ 50,000/-	₹ 50,000/-
7.	Future Treatment	₹ 25,000/-	₹ 25,000/-
8.	Attendant Expenses/Charges	₹ 10,000/-	₹ 28,544/-
9.	Loss of Amenities in Life	Nil	₹ 25,000/-

	Total =	₹ 3,87,776/-	₹ 4,38,490/-
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21. The overall compensation is thus enhanced from ₹ 3,87,776/- to ₹ 4,38,490/-. The enhanced compensation of ₹ 50,714/- shall carry interest @ 8% per annum as awarded by the Claims Tribunal.
22. This accident took place more than 15 years ago, the enhanced compensation is only a small amount. The Respondent No.3 Insurance Company is directed to deposit the enhanced compensation with the Claims Tribunal within six weeks and shall be released to the Appellant.
23. The Appeal is allowed in above terms.
24. Pending Applications stands disposed of.

(G.P. MITTAL)
JUDGE

DECEMBER 06, 2012

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