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

Date of decision: 17th December, 2012

+ **MAC. APP. 711/2005**

SMT.NATTHO Appellant

Through: Mr.J.S.Kanwar, Advocate.

Versus

SMT.VEENA RANI AGGARWAL & ANR. Respondents

Through: None.

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 ₹ 1,66,500/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of Appellant Smt. Nattho for having suffered injuries in a motor vehicle accident which occurred on 09.11.1999 resulting in permanent disability of above 40% in respect of the left lower limb on account of the malunited fracture of ankle/feet.
2. In the absence of any Appeal by the driver; the owner or the insurer of the offending vehicle; the finding on negligence has attained finality.
3. The Appellant suffered crush injuries on her left foot and knee. Immediately after the accident, the Appellant was removed to Guru Teg Bahadur Hospital, Shahdara, Delhi-110095. Debridement of wound was done on 10.11.1999. Re-debridement was done on 20.11.1999. The Appellant remained admitted in the hospital till 05.01.2000, that is, for a

period of almost 2 months. She remained an outdoor patient with Guru Teg Bahadur Hospital till June/July, 2000. She was then treated in Lok Nayak Jai Prakash Hospital, New Delhi till October, 2001.

4. The Claims Tribunal awarded a compensation of ₹ 1,66,500/- which is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Loss of income on account of 40% permanent disability	₹ 1,44,000/-
2.	Loss of income during treatment	₹ 7,500/-
3.	Pain & Suffering	₹ 15,000/-
	Total =	₹ 1,66,500/-

5. It is urged by the learned counsel for the Appellant that the Appellant was aged 40 years. She was unable to carry out her household activities because of the disability suffered by her. The compensation on account of the permanent disability for loss of gratuitous services as also towards non-pecuniary damages is on the lower side.
6. She was issued a disability certificate Ex.PW-1/18 from Lok Nayak Hospital whereby she was declared to have suffered above 40% permanent disability in respect of her left lower limb and the disability certificate Ex. PW-1/19 was issued from the office of the Chief Medical Officer, Meerut showing the disability to the extent of 45% in respect of the left lower limb. No expert evidence was led as to the exact impact of the disability suffered by the Appellant on the work which is to be performed by a housewife.

7. The Claims Tribunal awarded a compensation of ₹ 1,44,000/- on the notional income of ₹ 15,000/- per annum. 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 a 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 find 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 the absence of any specific evidence in *Raj Kumar v. Ajay Kumar & Anr.*, 2011 (1) SCC 343, the Supreme Court took 45% disability in respect of left lower limb as 20% loss of future earning capacity. In the instance case, on account of the malunion of the bone at ankle and the deformity caused by it, the Appellant would be in considerable difficulty while carrying out day to day work as a housewife. In the circumstances, loss of gratuitous services rendered by her as a housewife is assessed to be to the extent of 25%.
9. In *Royal Sundaram Alliance Insurance Co. Ltd. v. Master Manmeet Singh & Ors*, 2012 ACJ 721 this Court referred to the judgments and principles laid down for awarding of the compensation for loss of gratuitous services rendered by a housewife. There is no evidence with regard to the Appellant's qualification, the loss of earning capacity following the principles laid down in *Master Manmeet* (supra), comes to ₹ 1,42,931/- (2541/- +25% x 12 x 15 x 25%).
10. The Appellant remained admitted in the hospital for about two months and thereafter she was an outdoor patient. From the nature of the injuries suffered, it can be assumed that the Appellant was unable to carry out any

work at all for a period of 6 months. I award a compensation of ₹ 15,246/- (2541 x 6) for loss of gratuitous services to be rendered to the family for six months.

11. The Appellant remained an outdoor patient for a period of almost two years, it would be reasonable to presume that there must be at least 30-40 visits made by her to the hospital, in addition to the visits of the family members made during her confinement in GTB Hospital for a period of two months.
12. I, therefore, award a sum of ₹ 40,000/- towards pain and suffering and ₹ 10,000/- towards special diet and conveyance.
13. Considering the permanent disability suffered and the fact that the accident took place in the year 1999, I further award a sum of ₹ 25,000/- towards loss of amenities in life.
14. The overall compensation thus is recomputed as under:-

Sl. No.	Compensation under various heads	Awarded by this Court
1.	Loss of earning capacity	₹ 1,42,931/-
2.	Loss of gratuitous services	₹ 15,246/-
6.	Pain & Suffering	₹ 40,000/-
7.	Special Diet & Conveyance	₹ 10,000/-
8.	Loss of Amenities in Life	₹ 25,000/-
	Total =	₹ 2,33,177/-

15. The overall compensation is thus enhanced from ₹ 1,66,500/- to ₹ 2,33,177/-.
16. The enhanced compensation of ₹ 66,677/- shall carry interest @ 7.5% per

annum from the date of filing of the Petition till its payment.

17. The enhanced compensation shall be deposited with the Claims Tribunal within six weeks and shall be released to the Appellant.
18. The Appeal is allowed in above terms.
19. Pending Applications stands disposed of.

(G.P. MITTAL)
JUDGE

DECEMBER 17, 2012

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