

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

Date of decision: 9th August, 2012

+ **MAC.APP. 450/2010**

MEHRUDDIN

..... Appellant

Through: Ms. Aruna Mehta, Advocate

versus

NATIONAL INSURANCE COMPANY LTD. & ORS..... Respondents

Through: Ms. Manjusha Wadhwa, 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)

CM APPL.12752/2010

1. Learned counsel for the Appellant does not press this Application for additional evidence and seeks liberty to withdraw the Application.
2. The same is dismissed as withdrawn.

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3. The Appeal is for enhancement of compensation of ₹9,81,600/- 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 22.02.2007.

4. In the absence of any Appeal by the driver, owner or the Insurer the finding on negligence has attained finality. Thus, I am required to go only into the question whether the compensation awarded is just and reasonable.
5. The compensation awarded by the Claims Tribunal is tabulated hereunder:-

Sl.No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Medicines and Medical Treatment	₹52,000/-
2.	Future Medical Treatment	₹15,000/-
3.	Loss of Earning Capacity due to Disability	₹ 8,31,600/-
4.	Loss of Amenities of Life	₹ 25,000/-
5.	Pain and Suffering	₹ 40,000/-
6.	Conveyance & Special Diet	₹ 18,000/-
	Total	₹ 9,81,600/-

6. It is urged by the learned counsel for the Appellant that the compensation awarded is very meager and low.
7. The following contentions are raised on behalf of the Appellant:-
- (i) The Appellant suffered 64% permanent disability. The Claims Tribunal awarded loss of earning capacity taking the effect on earning capacity to be 60% only. Since, the Appellant's right hand

was required in conducting the business, the loss of earning capacity should have been taken as 100%.

- (ii) The Appellant was in small business of garment manufacturing. He himself was a Master Cutter. His future prospects were not taken into consideration while awarding loss of future earning capacity.
 - (iii) The Appellant was unable to do any work for a period of about two years. No compensation towards loss of income for two years was granted.
 - (iv) The Appellant was unable to take care of himself on account of amputation of his right middle finger. He was dependent on his family members for his small needs. No compensation was awarded towards the gratuitous services rendered by the family members.
 - (v) The compensation awarded under non-pecuniary heads that is pain and suffering and loss of amenities is on the lower side.
8. On the other hand, it is urged by the learned counsel for the Respondent Insurance Company that the compensation awarded is very liberal and does not call for any enhancement. It is stated that the compensation awarded towards loss of future earning capacity is very excessive.
9. Although, no Cross Objection or Cross Appeal has been filed by the Respondent Insurance Company but the Respondent can support the judgment without filing any Cross-Objections in view of the provision under Order XLI Rule 22 CPC. (*Shri Ravinder Kumar Sharma v. The State of Assam & Ors. AIR 1999 SC 3571*).

LOSS OF EARNING CAPACITY

10. The Appellant suffered crush injury on his right arm, forearm, segmental fracture shaft ulna with Monteggia and fracture of radius deep joint and dislocation of fourth lateral aspect of right arm extending to the front of elbow upto medial holder.
11. The injuries on the Appellant person were quite serious as is evident from PW-4 Dr. Kundan Kundu's testimony. He stated as under:-

"I have seen discharge summary of patient Sh. Mehruddin bearing CR no.634275. As per the discharge summary, the patient was admitted in the hospital on 23/02/2007 and was discharged on 05/03/2007. Same is already Ex.P-4. As per the same, the patient had suffered fracture of both the bones of right forearm and dislocation of the joint of right fourth finger. The patient has also suffered soft tissue injury of right forearm and elbow. The injury suffered by the patient of the right arm is crush injury. The patient has undergone surgery of the right forearm for the fracture of both the bones of forearm. Steel internal implants were used for the Alna and steel external implants were used for the radius. The patient had however suffered an infection and the implant had to be removed.

I had seen the discharge summary of patient Sh.Mehrudin bearing CR no.634221. As per the discharge summary, the patient was admitted in the hospital on 17/09/2007 and was discharged on 18/09/2007. As per the same, no orthopaedic intervention was done as the patient was unfit to undergo any treatment.

I identify the signatures of Dr. Ajay Gupta as I have seen him writing and signing during the course of my official duties.

Thereafter the patient has remained an Outdoor patient since the accident and since he had suffered infection and amputation of right fourth finger was done. The petitioner is under treatment till date.

At this stage, the petitioner has also produced the documents which reflects that the petitioner is still suffering from the infection he had sustained after the surgery and needs to regularly attend the OPD for treatment for the infection and dressing of the wound. The petitioner will have to undergo this treatment till the infection is cured and no definite time period can be given regarding the same. Same is Ex.P-X.”

12. The Appellant was issued a Disability Certificate dated 28.02.2008 (Mark 3A) which was proved by PW-3 Dr. Harish Mansukhani. He was declared to have suffered 64% permanent impairment in relation to his right upper limb on account of a crush injury on right forearm and hand and traumatic amputation of his right ring finger.
13. The learned counsel for the Appellant drew my attention to the Appellant's evidence filed by way of an Affidavit. He deposed that he was carrying business of garment fabrication in the name and style of M/s. Mohd. Ali Garments. He testified that he used to do the cutting work with his own hands as he was a Master Cutter.
14. From the Appellant's treatment papers and discharge summary, it is evident that initially, the Appellant remained admitted in Guru Tegh Bahadur (GTB) hospital. On the date of the accident itself he was shifted to LNJP hospital where he remained admitted for a period of ten days, that is, from 23.02.2007 to 05.03.2007. He remained admitted in the City Hospital from 02.05.2008 to 14.05.2008.
15. During his admission in the hospital, the Appellant was operated upon and his right ring finger was amputated. The Disability Certificate Mark 3A, as stated earlier is on record, declaring the Appellant to have suffered permanent disfigurement and impairment in relation to his right upper limb to the extent of 64%, on account of crush injury in the right forearm

and traumatic amputation of right ring finger. Although, PW-4 Dr. Harish Mansukhani, who was one of the members of the Medical Board who issued the Disability Certificate, was not put any question as to the extent of the work which the Appellant can perform with his right hand.

16. It is urged by the learned counsel for the Appellant that he (the Appellant) is permanently disabled and is not in a position to carry out any work even now. Unfortunately, the Appellant had an opportunity to take the expert opinion of Dr. Harish Mansukhani PW-4 but he did not take any opinion. The Appellant was carrying out the business of garment fabrication; of course as per his testimony he himself was also doing the cutting work, yet, in the absence of any evidence in this regard, it cannot be said that he was totally disabled to perform the cutting work.
17. 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 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 found 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."

18. In the absence of any evidence, it would be difficult to say that the Appellant suffered 100% loss of earning capacity or even 60% loss of earning capacity. Considering that there was loss of one middle finger and fracture of ulna etc. and taking into consideration the Disability Certificate, I would take the loss of earning capacity to be 35% only.
19. This Court in *Rakhi v. Satish Kumar & Ors.* (MAC. APP. 390/2011) decided on 16.07.2012, referred to the reports of the Supreme Court in

General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors. (1994) 2 SCC 176, Sarla Dixit v. Balwant Yadav, (1996) 3 SCC 179, Bijoy Kumar Dugar v. Bidya Dhar Dutta & Ors, (2006) 3 SCC 242, Sarla Verma & Ors. v. Delhi Transport Corporation & Anr, (2009) 6 SCC 121 and Santosh Devi v. National Insurance Company Ltd. & Ors., 2012 (4) SCALE 559 and held that as per Santosh Devi even in the absence of any evidence as to future prospects an increase of 30% in the income has to be provided where the victim had fixed income or was a self employed person. Relevant portion of Santosh Devi is extracted hereunder:

“14.....In our view, it will be naive to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self- employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not

kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."

LOSS OF INCOME

20. It is urged by the learned counsel for the Appellant that he (the Appellant) was unable to attend to his work for a period of two years and he should have been awarded loss of income for two years. As per Income Tax Return the Appellant had an income of ₹1,09,000/- per annum.
21. The accident took place on 22.02.2007. The second surgery was performed in May, 2008. The Appellant must have taken about two months in recovering from the injuries after the second surgery. Although, there is no evidence with regard to the gap in between the first

treatment and the second treatment received in the hospital or that he was unable to carry out any work at all. But, assuming that he was unable to do any work at all for a period of two months from the date of his discharge, he was entitled to the compensation for loss of income for 18 months. The loss of income for 18 months thus comes to ₹1,63,500/- (1,09,000/- ÷ 12 x 18).

22. It is urged by the learned counsel for the Appellant that no compensation was awarded towards gratuitous services rendered by the family members. No evidence was led by the Appellant in this regard.
23. Even if the Appellant did not engage any Attendant and the gratuitous services were rendered by some or other of his relations, the Appellant is entitled to a suitable compensation towards gratuitous services (*Delhi Transport Corporation and Anr. v. Lalita AIR 1981 Delhi 558*).
24. In the circumstances, I would award compensation of ₹10,000/- that is gratuitous services rendered for three months in all by the Appellant's family members.
25. The Claims Tribunal awarded compensation of ₹40,000/- towards pain and suffering and ₹25,000/- towards loss of amenities. The same appears to be on the lower side. There was amputation of right ring finger and multiple fractures on the right arm, forearm etc.
26. It is difficult to measure in terms of money the pain and suffering which has been suffered by the claimant on account of serious injuries caused to him in a motor accident. Since the compensation is required to be paid for pain and suffering an attempt must be made to award compensation which may have some objective relation with the pain and suffering

underwent by the victim of a motor accident. For this purpose, the Claims Tribunal and the Courts normally consider the nature of injury; the parts of the body where the injuries were sustained; surgeries (if any) underwent by the victim; confinement in the hospital and the duration of the treatment.

27. Learned counsel for the Appellant places reliance on a judgment passed by the learned Single Judge in *Kanta Kumari v. Ajit Singh & Ors.* 2010 ACJ 1410 where compensation of ₹1,00,000/- was awarded towards pain and suffering, ₹1,00,000/- towards loss of amenities and ₹1,00,000/- towards disfigurement. In the said case the injured suffered crush injury resulting in fracture in lower end of fibula with degloving of skin and lacerated wound resulting in 65% disability in respect of left lower limb.
28. In case of *Govind Yadav v. New India Insurance Co. Ltd.* (2011) 10 SCC 683, where there was amputation of one lower limb above knee compensation of ₹1,50,000/- was awarded towards loss of amenities and ₹1,50,000/- towards pain and suffering.
29. The present case involves multiple fractures and amputation of right ring finger. The compensation awarded towards pain and suffering is enhanced from ₹40,000/- to ₹50,000/- and towards loss of amenities is enhanced from ₹25,000/- to ₹50,000/-.
30. The multiplier of 13 is being taken instead of 14 as loss of income for 18 months is being separately granted.
31. The compensation awarded is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by this Court
1.	Loss of Earning Capacity (1,09,000/- + 30% x 13 x 35%)	₹6,44,735/-
2.	Loss of Income for 18 months	₹ 1,63,500/-
3.	Pain and Suffering	₹ 50,000/-
4.	Gratuitous Services	₹ 10,000/-
5.	Loss of Amenities	₹ 50,000/-
6.	Conveyance and Special Diet	₹ 18,000/-
7.	Future Medical Treatment	₹ 15,000/-
8.	Medicines and Medical Treatment	₹ 52,000/-
	Total	₹ 10,03,235/-

32. The compensation of ₹9,81,600/- awarded by Claims Tribunal cannot be said to be on the lower side. The same is just and reasonable.
33. The Appeal is devoid of any merit the same is accordingly dismissed.
34. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

AUGUST 09, 2012
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