

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

Reserved on: 8th October, 2012
Pronounced on: 31st October, 2012

+ **MAC APP. 644/2011**

ALOK R. MAURYA Appellant
Through : Ms. Manu Tomer, Advocate.

versus

NARESH CHANDER KAPOOR & ORS. Respondents
Through : Mr. Pankaj Seth, Advocate for R-3.

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

J U D G M E N T

G. P. MITTAL, J.

1. The Appeal is for enhancement of compensation of ₹13,25,329/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the Appellant Alok K. Maurya who suffered injuries in a motor vehicle accident which occurred on 24.11.2007.
2. The crush injury on his right leg resulted in amputation of the right leg above knee.
3. The compensation awarded by the Claims Tribunal is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Pain and Suffering	₹1,00,000/-
2.	Loss of Amenities of Life	₹ 2,00,000/-

3.	Loss of Marriage Prospects	₹ 1,00,000/-
4.	Damages of Amputation of Leg and Disfigurement	₹ 1,75,000/-
5.	Loss of Expectation of Life	₹ 50,000/-
6.	Future Medical Expenses on Prosthesis	₹ 75,000/-
7.	Loss of Income	₹ 1,55,000/-
8.	Medical Expenses	₹ 3,90,329/-
9.	Travelling Expenses	₹ 40,000/-
10.	Special Diet	₹ 40,000/-
	Total	₹ 13,25,329/-

4. In the absence of any Appeal by the driver, owner or the Insurer, the finding on negligence has attained finality.
5. The following contentions are raised on behalf of the Appellant:-
 - (i) On account of amputation of right leg above knee, the Appellant suffered 80% permanent disability in relation to his right lower limb. Although, there was no immediate loss of earning but his earning capacity was definitely affected. The Claims Tribunal erred in not granting any compensation towards loss of earning capacity.
 - (ii) He has to change his prosthesis every three-four years and requires annual maintenance for it. The compensation of ₹75,000/- awarded towards future medical expenses on prosthesis is on the lower side.
 - (iii) No compensation was awarded towards Attendant charges although he had to engage an Attendant on a salary of ₹5,000/- per

month for a period of one year. To attend to his office and to visit the hospital he engaged a driver for his car. No compensation was awarded to him for engaging a driver.

- (iv) Compensation of ₹40,000/- on special diet and conveyance is on the lower side.
- (v) The compensation towards loss of marriage prospects is also very low.

6. The trend of the Superior Courts is to award full and fair compensation. In the case of *Raj Kumar v. Ajay Kumar & Anr.*, 2011 (1) SCC 343, the Supreme Court observed that the object of awarding damages is to make good the loss suffered as a result of the wrong done as far as money can do in a fair, reasonable and equitable manner. Para 5 of the report is extracted hereunder:-

“5. The provision of the Motor Vehicles Act, 1988 ('the Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. [See C.K. Subramonia Iyer v. T. Kunhikuttan Nair, AIR 1970 SC 376, R.D. Hattangadi v. Pest Control (India) (P) Ltd., 1995 (1) SCC 551 and Baker v. Willoughby, 1970 AC 467.

7. In *Arvind Kumar Mishra v. New India Assurance Company Limited*, (2010) 10 SCC 254, the Supreme Court dealt with the case of disability of an engineering student. The Supreme Court observed that while awarding compensation in personal injury cases, an attempt should be made to put the injured in the same position as he was as far as money is concerned. In para 9 of the report, the Supreme Court held as under:

“9. We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was insofar as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered.”

8. In *Nizam’s Institute of Medical Sciences v. Prasanth S. Dhananka & Ors.*, (2009) 6 SCC 1, the Supreme Court emphasized that cases of serious injuries in motor vehicle accident are worse than the death cases because the victim and his family suffers throughout life. Para 90 of the report is extracted hereunder:-

“90. At the same time we often find that a person injured in an accident leaves his family in greater distress vis-à-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity.”

9. In *Kavita v. Deepak & Ors.*, Civil Appeal No.5945/2012 decided on 22.08.2012, the Supreme Court laid down that an attempt should always

be made to award adequate compensation not only for physical injury and treatment but also for the loss of earning and inability to lead a normal life and enjoy the amenities which would have been enjoyed, but for the disability caused due to the accident.

10. In *Raj Kumar* the Supreme Court reiterated the heads under which compensation is awarded in personal injury cases are extracted hereunder:-

“Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses. Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.”

11. Now, I turn to the facts of this case.

LOSS OF EARNING CAPACITY

12. The Appellant is a Bachelor of Engineering in Computer Science. At the time of the accident he was working as a Software Engineer in an

American Company, namely, Computer Sciences Corporation at Noida. He was getting a salary of ₹31,000/- per month. Admittedly, his salary was not affected on account of the injuries sustained in the accident. He resumed his duties after a period of five months. He has been granted compensation of ₹ 1,55,000/- towards loss of income.

13. The Claims Tribunal while declining to grant future loss of earning capacity held that progression in Software Industries may not be directly related to physical capacity of a person. At the same time, the Claims Tribunal observed that on account of imposed disability, the Appellant would stand to lose certain opportunities because he is unable to stand without prosthesis. The Claims Tribunal held that the loss of future growth is not ascertainable and, therefore, the same cannot be granted on the basis of any multiplier.
14. It is true that there is no immediate loss in salary of the Appellant. But, at the same time it has to be kept in mind that the Appellant is a software engineer working in an American Company. With an artificial prosthesis in his right leg, the Appellant would have difficulty in walking. He cannot run. He would take a little more time in completing his job. Thus, his working capacity and efficiency will definitely be affected.
15. In similar circumstances, this Court in *Sandeep Mishra v. Vijay Kumar Yadav & Ors.*, MAC APP.215/2010 decided on 04.09.2012, where the victim suffered 26% disability in respect of his right lower limb and where the victim was employed with M/s. Flex Industries, granted the loss of earning capacity to the extent of 10%.
16. The Appellant who at the time of the accident was a young boy of 24 years cannot be debarred of the compensation simply on the ground that

the loss of earning capacity is not exactly ascertainable. The Court can make guess work. In the circumstances of the case, with the amputation of leg, there would be at least 10% loss of earning capacity. He (the Appellant) is a qualified Software Engineer and in permanent employment in a multi-national company. Therefore, the Appellant would be entitled to an addition of 50% towards future prospects.

17. I would, therefore, award him a compensation of ₹9,36,900/- (31,000/- x 12 – 25,000/- (income tax) + 50% x 18 x 10%) towards loss of earning capacity.

FUTURE MEDICAL EXPENSES

18. The Appellant obtained an artificial prosthesis from Otto Bock Health Care. He examined PW-7 Dhananjay Kumar, Prosthetist and Orthothetist from the company, who proved the invoice Ex.PW-7/12 with regard to purchase of the prosthesis for ₹1,29,500/-. The said sum of course was awarded in favour of the Appellant. The Appellant's grievance is that he has not been granted any compensation towards maintenance and upkeep of prosthesis which is required to be changed every 3-4 years. Testimony of PW-7 Dhananjay Kumar is extracted hereunder:-

“I am a summoned witness. I have been authorized to depose on behalf of Otto Bock Health Care. The original authorization letter is Exhibit PW-7/1 which is duly signed by Shri Roman Jagota, Centre Manager. The treatment of injured Alok Maurya is Ex.PW-7/2 & 7/3. The injured was under our treatment from 4/2/08 to 26/2/08. The patient is required visit our clinic for annual follow up. The cost of annual repair of prosthetic limb varies from 10,000/- to 15,000/-. The annual cost of repair depends on the condition and age of the patient. The cost of artificial limb which are available in our clinic for the injured ranges from 70,000/- to ₹15 lakhs only. The mobility depends on the quality of knee joint and foot piece of artificial limb which is fixed on leg of the patient.

The artificial limb has to be changed in the times span of 3 to 5 years. As per the conditions of the patient and wear and tear of artificial limb the artificial limb has to be upgraded for betterment and proper mobility. The approximate rate for the upgraded artificial limb as per the age and requirements of the patient shall be ₹4 to 5 lakhs. The artificial limb which is fixed on the patient will have to be changed within a time period of 3-4 years. Due to physiological changes in the body the socket is required to be changed within stipulated time.

XXXX by Shri N.K. Handa, Advocate for R-1 & R-2.

I am working in this firm since March 2006. I have no personal knowledge of this case. The treatment was done at Bombay. It is wrong to suggest that I am deposing falsely.”

19. The treatment papers from Otto Bock have been proved as Ex.PW-7/3. No suggestion was given to PW-7 that replacement of the prosthesis in case of the Appellant would not be required. The cost of a new artificial limb was given to be ₹70,000/- to ₹ 15 lakh. In this case, the artificial limb was purchased for ₹1,29,500/-. In the circumstances, I would award him compensation for replacement of at least four artificial limbs during his life span as the Appellant was only 24 years on the date of the accident. In addition, I would award a sum of ₹1,00,000/- towards annual maintenance of the prosthetic limb. Thus, the compensation towards replacement of prosthetic limb and its annual maintenance comes to ₹6,18,000/- (1,29,500/- x 4 + 1,00,000/-) as against a sum of ₹75,000/- awarded by the Claims Tribunal.

ATTENDNAT CHARGES

20. The Appellant claimed that he had to engage an Attendant for a period of one year. It is proved on record that the Appellant had to take leave for a period of about five months to recover from the injuries. From the nature of injuries, it can be presumed that the Appellant would have needed

assistance of an Attendant at least for a period of four months. The Minimum Wages of an unskilled worker in November, 2007 were ₹3516/-. The Appellant claimed that he paid a sum of ₹5,000/- per month to the servant engaged by him. The name of the servant was not disclosed. No receipt was proved on record.

21. 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 family members for the benefit of the tortfeasor.
22. In the circumstances, I would award him compensation of ₹14,000/- (3500/- x 4) for four months towards Attendant Charges.

SALARY OF A DRIVER

23. The Appellant testified that he had to incur huge expenses on conveyance on account of amputation of his right leg. He engaged driver on the salary of ₹ 5,000/- per month. In cross-examination, the Appellant stated that he did not have any proof regarding employing a driver for him. No evidence was produced by the Appellant that he would be unable to drive the vehicle with an artificial limb.
24. The Court can take judicial notice of the fact that a number of companies have produced motor cars which are suitable to be driven by the persons with different abilities. Possibly, the Appellant would have to spend some more money on an automatic transmission vehicle which could be driven by a person with disability than an ordinary vehicle. I would make guess work and in the circumstances, instead of awarding any compensation towards salary of a driver by taking a multiplier, I would award a compensation of ₹2,00,000/- as the difference in amount for

purchase of an appropriate vehicle which could be driven by a person with different abilities.

25. It is urged that the compensation of ₹ 40,000/- awarded towards special diet and conveyance and ₹1,00,000/- towards loss of marriage prospects is on the lower side. The Appellant has been granted a total sum of ₹ 5,75,000/- towards non pecuniary damages, that is, ₹ 1,00,000/- towards pain and suffering, ₹ 2,00,000/- towards loss of amenities of life, ₹1,00,000/- towards loss of marriage prospects and ₹1,75,000/- towards disfigurement.
26. In *Govind Yadav v. New India Insurance Co. Ltd. (2011) 10 SCC 683*, in case of amputation of above knee of a victim aged 24 years in an accident which took place in the year 2004, the Supreme Court granted a compensation of ₹1,50,000/- towards pain and suffering and ₹1,50,000/- towards amenities in life and loss of marriage prospects.
27. Considering that this accident occurred in November, 2007, the Claims Tribunal was quite liberal in awarding overall compensation of ₹ 5.75 lacs towards non pecuniary damages. It does not call for any enhancement. It may be difficult to compensate the Appellant for loss of his marriage prospects in terms of money. But the overall compensation of ₹5.75 lacs awarded towards non pecuniary damages by the Claims Tribunal cannot be said to be on the lower side by any stretch of imagination. Rather, as stated above the Claims Tribunal was quite liberal in awarding this compensation.
28. The compensation of ₹ 40,000/- towards special diet and conveyance in the absence of any documentary evidence and keeping in view the nature

of injuries, seems to be just and reasonable and does not call for interference. The compensation awarded is re-computed as under:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Pain and Suffering	₹1,00,000/-	₹1,00,000/-
2.	Loss of Amenities of Life	₹ 2,00,000/-	₹ 2,00,000/-
3.	Loss of Marriage Prospects	₹ 1,00,000/-	₹ 1,00,000/-
4.	Damages of Amputation of Leg and Disfigurement	₹ 1,75,000/-	₹ 1,75,000/-
5.	Loss of Expectation of Life	₹ 50,000/-	₹ 50,000/-
6.	Future Medical Expenses on Prosthesis	₹ 75,000/-	₹6,18,000/-
7.	Loss of Income	₹ 1,55,000/-	₹ 1,55,000/-
8.	Medical Expenses	₹ 3,90,329/-	₹ 3,90,329/-
9.	Travelling Expenses (for purchase of Automatic Transmission Vehicle)	₹ 40,000/-	₹ 2,00,000/-
10.	Special Diet	₹ 40,000/-	₹ 40,000/-
11.	Loss of Earning Capacity	--	₹9,36,900/-
12.	Attendant Charges	--	₹ 14,000/-
	Total	₹ 13,25,329/-	₹ 29,79,229/-

29. The compensation is thus enhanced from ₹13,25,329/- to ₹29,79,229/-.

30. The enhanced compensation of ₹16,53,900/- shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.
31. Respondent No.3 National Insurance Company Limited is directed to deposit the enhanced compensation along with interest with the Claims Tribunal within six weeks.
32. Sixty percent of the enhanced compensation shall be held in fixed deposit for a period of two years, four years, six years, eight years and ten years in equal proportion. Rest 40% shall be released on deposit.
33. The Appellant shall be entitled to approach the Claims Tribunal for premature withdrawal of any amount in case of any need.
34. The Appeal is allowed in above terms.
35. Pending Applications stands disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 31, 2012
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