

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

Date of decision: 16th April, 2012

+ **MAC.APP. 173/2009**

JHAMMAN LAL

..... Appellant

Through: Mr. J.S. Kanwar, Advocate

versus

KAWALJEET KAUR & ORS

..... Respondents

Through: Mr. Pradeep Gaur, Advocate for
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 seeks enhancement of compensation of ₹ 4,18,360/- awarded for having suffered grievous injuries in an accident which occurred on 29.06.2002 resulting into the amputation of his right leg below knee.
2. Initially, the doctors at R.M.L. Hospital issued a Permanent Disability Certificate to the extent of 40% in respect of the right lower limb which was later on revised to 60% by Safdarjung Hospital, New Delhi.
3. The following contentions are raised on behalf of the Appellant:-

- (i) The Appellant was a fruit vendor. He claimed his income to be ₹5,000/- per month. The Motor Accident Claims Tribunal (the Claims Tribunal) rejected the income claimed and took the minimum wages of an unskilled worker to compute the loss of his earning capacity.
 - (ii) On account of the amputation of his right leg, the Appellant was totally incapacitated to carry out his work of a fruit vendor; loss of earning capacity should have been taken as 100% instead of 40% as taken by the Claims Tribunal.
 - (iii) The compensation awarded towards pain and suffering (Rs.50,00/-) and towards disfigurement and loss of amenities (Rs.50,000/- each) is on the lower side. These need to be enhanced.
4. 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 the 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 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.”

5. Thus, the same disability may have a different impact on the earning capacity of an injured following a different vocation.
6. In the instant case, the Appellant’s testimony that he was working as a fruit vendor on the footpath was not challenged in cross-examination.
7. The Appellant might have some inconvenience in reaching the vending site. He may have some difficulty in attending to the customers and his earning capacity would get reduced. But, it cannot be said that there would be a 100% loss of earning capacity. The Claims Tribunal on the basis of the first Disability Certificate accepted the loss of earning capacity to be 40%. Even if, the second Disability Certificate is accepted to show that the Appellant suffered disability to the extent of 60% in respect of his right lower limb (on account of the amputation of his leg below knee), in my view, considering the Appellant’s vocation, the loss of earning capacity would be 40% only.

8. The Appellant claimed that he was earning ₹ 5,000/- per month by selling fruits in *Jhalli* (basket) on the footpath at Ashoka Road. No Income Tax Return was placed on record. The non-taxable limit in the year 2002 for an individual was ₹ 50,000/-. In the absence of any ITR or any other cogent evidence with regard to the Appellant's income, the Claims Tribunal rightly took his income to be ₹ 2600/- per month as per the minimum wages of an unskilled worker at the time of accident. At the same time, the Claims Tribunal granted future prospects on the basis of the judgment of the Karnataka High Court in *K. Narsinha Murti v. M/s. Oriental Insurance Company Limited & Ors.* 2004 ACJ 1109.
9. *K. Narsinha Murti (sputa)* was a case where the victim was a Constable working in CRPF. He had bright future prospects. The victim in that case was discharged from the service on account of the injuries suffered by him. Since there was evidence of bright future prospects, 50% increase was granted by the Karnataka High Court. In this case, there was no such evidence of future prospects. The Claims Tribunal fell into error in granting future prospects.
10. In view of the above discussion, the loss of future earning capacity would come to ₹ 1,62,240/- (2600/- x 12 x 13 x 40%) as against ₹ 2,43,360/- awarded by the Claims Tribunal.

11. Immediately after the accident, the Appellant was admitted in R.M.L. Hospital. He was discharged from the hospital on 17.07.2002 and remained under treatment as an Out Door Patient for a very long time. Even after the amputation of his right leg below knee, the bone was protruding and there was complaint of a sinus discharging on the site of amputation. The Appellant was readmitted in the hospital on 06.08.2003. Subsequently, nebuling was done under general anesthesia and 1 cm of tibia and fibula were removed from lower end of the previous amputated site. Even thereafter, the Appellant must have taken a couple of months to recover from the injuries. He was, therefore, entitled to the loss of income for a period of at least one year and six months, which would come to ₹ 46,800/- (2600/- x 18).
12. Coming to the award of compensation towards non-pecuniary heads, I would refer to the report of the Supreme Court in *Govind Yadav v. New India Insurance Co. Ltd. (2011) 10 SCC 683*. It was a case of amputation of left leg above knee. The incident in that case occurred in the year 2004 as against this case which took place in the year 2002. The injured in the said case was a bachelor aged 24 years. The compensation of ₹1.5 lacs was awarded towards pain and suffering and ₹ 1.5 lacs was awarded towards loss of amenities in life and loss of marriage prospects.

13. In this case, the injured is aged about 46 years. Taking into account the fact that there was a prolonged treatment in the case, I would award compensation of ₹1,00,000/- towards pain and suffering as against ₹ 50,000/- awarded by the Claims Tribunal. The compensation of ₹1,00,000/- awarded towards disfigurement and loss of amenities in life is just and reasonable.
14. The compensation awarded is reassessed as under:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Pain & Suffering	₹50,000/-	₹1,00,000/-
2.	Medicines, Medical Treatment	₹ 15,000/-	₹ 15,000/-
3.	Conveyance & Special Diet	₹ 10,000/-	₹ 10,000/-
4.	Permanent Disability & Loss of Income	₹ 2,43,360/-	₹ 1,62,240/-
5.	Physical Disfigurement	₹ 50,000/-	₹ 50,000/-
6.	Loss of Enjoyment & Amenity in Life	₹ 50,000/-	₹ 50,000/-
7.	Loss of Income for 18 months	--	₹ 46,800/-
	Total	₹ 4,18,360/-	₹ 4,34,040/-

15. The compensation payable comes to ₹ 4,34,040/- as against ₹ 4,18,360/- awarded by the Claims Tribunal.
16. In the circumstances, it cannot be said that the compensation awarded by the Claims Tribunal is meager. Rather, the compensation is just and proper.
17. I would not like to interfere with the impugned Judgment; the same is accordingly dismissed.
18. No costs.

(G.P. MITTAL)
JUDGE

APRIL 16, 2012

vk