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

Date of decision: 27th November, 2012

+ **MAC. APP. 550/2012**

KHYALI RAM

..... Appellant

Through: Mr. S.N. Parashar, Advocate.

Versus

RAJENDER SINGH & ORS.

..... Respondents

Through: Mr. J.P.N. Shahi, Advocate for the
Respondent No.3 Insurance Company.

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 ₹3,02,000/- 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 22.01.2006.
2. During inquiry before the Claims Tribunal, it was claimed that on 22.01.2006 at about 9:00 pm, the Appellant was hit by a Tata Sumo No.HR-38-K-6714 which was driven by the First Respondent in a rash and negligent manner. It was stated that the deceased was working as a farmer and was earning ₹6,000/- per month. It was the Appellant's case that immediately after the accident, he was removed to All India Institute of Medical Sciences(AIIMS). He was found to have suffered head injury

with Traumatic Subarachnoid Hemorrhage with Soft Tissue injury on right leg and fracture on neck of fibula right. The Appellant remained admitted in AIIMS from 23.01.2006 to 28.01.2006. On account of brain injury, the Appellant suffered Hemiparesis with right facial Nerve Palsy. He was declared to have suffered 49% injury in relation to his upper right and lower limb with right side of face.

3. On appreciation of evidence, the Claims Tribunal held that the Appellant was working as a farmer. In the absence of any proof of his income, the Claims Tribunal took the minimum wages of a semi-skilled worker to award loss of earning capacity for six months. The Claims Tribunal held that although the disability in respect of right upper and lower limb was 49%, yet the functional disability could be taken to be only 30%.
4. The compensation awarded is tabulated hereunder:

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Medical Expenses	₹10,000/-
2.	Pain & Suffering & Enjoyment of Life	₹ 30,000/-
3.	Special Diet & Conveyance Charges	₹ 25,000/-
4.	Loss of Income	₹ 20,000/-
5.	Future Loss of Income	₹ 1,92,000/-
6.	Loss of Amenities	₹ 25,000/-
	Total	₹ 3,02,000/-

5. The following contentions are raised on behalf of the Appellant:
- (i) The Appellant suffered very serious head injury. Since he was working as a farmer, his working capacity was substantially affected. The Claims Tribunal erred in reducing the loss of earning capacity to 30%.
 - (ii) While awarding loss of future earning capacity, addition of 30% towards inflation was not made. Reliance is placed on *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559.
 - (iii) The compensation awarded towards pain and suffering and loss of amenities is on the lower side.
6. On the other hand, the learned counsel for the Respondent Insurance Company urges that the compensation awarded is just and reasonable and does not call for any interference.
7. Section 168 of the Act enjoins a Claims Tribunal to determine the amount of compensation which is just and reasonable. It can neither be a source of profit nor should it be a pittance. In *State of Haryana v. Jasbir Kaur*, (2003) 7 SCC 484, the Supreme Court held as under:

“7. It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense ‘damages’ which in turn appears to it to be ‘just and reasonable’. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be ‘just and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which

should be just. What would be 'just' compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of 'just' compensation which is the pivotal consideration. Though by use of the expression 'which appears to it to be just' a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression 'just' denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just."

8. 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."

LOSS OF FUTURE EARNING CAPACITY:

9. 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

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.”

10. I have before me the disability certificate Ex.PW1/2 as also the discharge summary from AIIMS. In the discharge summary, it was stated that “*Pt. will have cognitive defects in view of severe head injury and he has to follow up in NS-OPD*”. The disability certificate clearly states that the Appellant suffered residual right side of hemiparesis with right facial and Nerve Palsy resulting in 49% permanent physical impairment in respect of upper and lower limb. The Appellant was working as a farmer and had to carry out a lot of manual work. In the circumstances, there was no justification for reducing the loss of earning capacity to 30% when the impairment in respect of the right upper and lower limb was to the extent of 49%. I would hold that the Appellant suffered loss of earning capacity to the extent of 49%.
11. 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."

12. The loss of earning capacity thus comes to ₹4,07,394/- (₹3331/- + 30% x 12 x 16 x 49%).
13. The MLC and the discharge summary shows that the Appellant suffered traumatic injury on the right leg, fracture on neck of fibula and serious head injury. He remained admitted in the hospital for five days and was on ventilator. It is difficult to measure the pain and suffering in terms of money 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. The compensation of ₹30,000/- awarded towards pain and suffering is enhanced to ₹50,000/-.

14. In view of the injuries suffered, the Appellant would have difficulty in walking, running and squatting throughout his life. The compensation of ₹25,000/- awarded towards loss of amenities and expectation of life is on the lower side. The same is enhanced to ₹50,000/-.
15. The compensation is tabulated hereunder:

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Medical Expenses	₹10,000/-	₹10,000/-
2.	Pain & Suffering & Enjoyment of Life	₹ 30,000/-	₹ 50,000/-
3.	Special Diet & Conveyance Charges	₹ 25,000/-	₹ 25,000/-
4.	Loss of Income	₹ 20,000/-	₹ 20,000/-
5.	Future Loss of Income	₹ 1,92,000/-	₹4,07,394/-
6.	Loss of Amenities	₹ 25,000/-	₹ 50,000/-
	Total	₹ 3,02,000/-	₹ 5,62,394/-

16. The enhanced compensation of ₹2,60,394/- shall carry interest @ 7.5% per annum as awarded by the Claims Tribunal. 75% of the amount payable to the Appellant shall be held in fixed deposit for a period of four years and eight years in equal proportion. Rest 25% shall be released on deposit.
17. The Respondent No.3 Oriental Insurance Co. Ltd. is directed to deposit the enhanced amount of ₹2,60,394/- along with interest with the Claims Tribunal within six weeks.

18. The Appeal is allowed in above terms.
19. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

NOVEMBER 27, 2012
pst