

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

Date of decision: 3rd May, 2012

+ **MAC.APP. 423/2007**

JASPAL SINGH AHULA Appellant
Through: Mr. Sanjeev Joshi, Adv.

versus

MANOJ KUMAR & ORS. Respondent
Through: Mr. A.K. Soni, 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 Appeal is for enhancement of compensation of ₹95,500/- awarded to the Appellant for having suffered injuries in a motor accident which occurred on 11.12.1996 while the Appellant was proceeding to his office on his two wheeler No.CHP-3451.
2. The Appellant suffered multiple fractures on his forehead and injury on his right eye. He remained admitted in Sir Ganga Ram Hospital from 11.12.1996 to 20.12.1996. The Appellant approached Sankara Nethralaya, Madras and on 20.12.1996 Dr. S.S. Badrinath opined that there was no possibility of recovery of the vision in Appellant's left eye. A Disability Certificate dated 04.08.1997 was issued by Dr. Ram Manohar Lohia

Hospital (Ex.PW-1/5) stating that the Appellant had suffered permanent disability of vision to the extent of 30% because of loss of vision in the left eye. As per the Disability Certificate Ex.PW-1/5, the Appellant was on artificial eye (L).

3. The Appellant was a qualified Engineer at the time of the accident. He was working as a Chief Manager in Electronics Trade and Technology Development Corporation Limited and was getting a salary of ₹10,040/- (Salary Certificate Ex.PW-1/6). Since the Appellant was employed in a Corporation owned by the Govt. of India, he was reimbursed the amount spent on the treatment. There was an award of compensation of ₹95,500/- by the Claims Tribunal which is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Pain and Suffering	₹15,000/-
2.	Conveyance	₹ 7,500/-
3.	Physiotherapy	₹ 5,000/-
4.	Special Diet	₹ 5,000/-
5.	Disability	₹ 30,000/-
6.	Loss of Income	₹ 18,000/-
7.	Loss of Enjoyment & Amenity	₹ 15,000/-
	Total	₹ 95,500/-

4. Following contentions are raised on behalf of the Appellant:-

- (i) Although the Appellant suffered 30% permanent disability in respect of his vision because of the loss of his left eye, he has not been granted any compensation towards loss of earning capacity.
- (ii) No compensation has been awarded towards Loss of Amenities in Life and Disfigurement. Compensation awarded towards Loss of Leave was inadequate. The Appellant was unable to attend his work for 18 months.
- (iii) The compensation of ₹15,000/- towards Loss of Enjoyment and Amenity is on the lower side.
- (iv) The compensation awarded towards conveyance and special diet is also on the lower side.

5. Section 168 of the Act envisages grant of just and fair compensation. In the case of *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors. (1994) 2 SCC 176*, it was held as under:-

“5.....The determination of the quantum must answer what contemporary society "would deem to be a fair sum such as would allow the wrongdoer to hold up his head among his neighbours and say with their approval that he has done the fair thing". The amount awarded must not be niggardly since the law values life and limb in a free society in generous scales'. All this means that the

sum awarded must be fair and reasonable by accepted legal standards.”

6. A perusal of the Appellant's testimony who examined himself as PW-1 would show that he was working as Chief Manager at the relevant time. He earned promotions and was promoted as Deputy General Manager. At the time of recording of his statement, his salary increased from ₹10,000/- to ₹20,000/-. It has come in evidence that the Appellant took Voluntarily Retirement but, he did not do so on account of the injuries suffered by him. Thus, there is ample evidence to show that the Appellant did not suffer any loss of earning capacity, he, therefore, cannot be awarded any compensation towards Loss of Earning Capacity.
7. It is amply proved from the Certificate Ex.PW-1/5 that the Appellant had suffered visual disability to the extent of 30% because of loss of his left eye. The Appellant would face difficulty in his day to day life. He being an Engineer would get strained and his capacity to work would definitely be affected, it was a different matter that at the time of the accident the Appellant was not working in a Govt. Corporation and therefore, he also earned a promotion. In the facts and circumstances, I would award a compensation of ₹50,000/- towards Loss of Amenities and Disfigurement, in addition to the compensation of ₹30,000/- towards permanent disability granted by the Claims Tribunal, as against the compensation of

₹15,000/- granted by the Claims Tribunal.

8. The Appellant claimed that he could not attend to his duties for 18 months. In his cross-examination, he admitted that he resumed his duty on 22.02.1997. Of course, he added that he resumed his duty on a temporary basis but he is silent if he took any leave after resuming his duty on 22.02.1997. Thus, he was entitled to be compensated for Loss of Leave for a period of only two months and ten days. I would, therefore, enhance the compensation of ₹18,000/- awarded by the Claims Tribunal to ₹23,500/- towards loss of leave. (Monthly salary ₹ 10,040/-)
9. The compensation of ₹5,000/- was awarded on account of special diet. The Appellant has not given any detail of the special diet and the duration for which he was required to take the same. There is no scope for enhancement of the compensation awarded towards special diet.
10. Similarly, the Claims Tribunal awarded a compensation of ₹7,500/- towards conveyance, the Appellant stated that the TSR and taxi drivers did not supply bills for travelling in their vehicles. It may be true that many a time the taxi driver would not supply bills, but the details of the visit to the hospital, the amount spent on each visit to the doctor has also not been given. The award of compensation of ₹7,500/- towards conveyance, considering the injury suffered by the Appellant, cannot be said to be low. The same does not require any interference.

11. The Appellant admitted that he was entitled to the reimbursement of the medical bills. He, however, deposed that some of the bills were rejected and were not reimbursed by his employers. The details of those bills or even the photocopies have not been filed. No witness was summoned from the employer to prove the bills which were rejected. No reason for rejection of the bills has been given. In the circumstances, it would be difficult to award any compensation towards treatment and purchase of medicines.
12. The Claims Tribunal awarded a compensation of ₹15,000/- towards pain and suffering. Considering the nature of injuries, the period of hospitalization and treatment, and the fact that the Appellant lost one eye and has to remain with only one eye throughout his life, it would be difficult to measure the pain and agony in terms of money. Yet, some compensation has to be awarded for the same. The awarded compensation of ₹15,000/- is enhanced to ₹30,000/-.
13. The overall compensation is thus re-assessed as under:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Pain and Suffering	₹15,000/-	₹30,000/-
2.	Conveyance	₹ 7,500/-	₹ 7,500/-
3.	Physiotherapy	₹ 5,000/-	₹ 5,000/-

4.	Special Diet	₹ 5,000/-	₹ 5,000/-
5.	Disability	₹ 30,000/-	₹ 30,000/-
6.	Loss of Income	₹ 18,000/-	₹ 18,000/-
7.	Loss of Enjoyment & Amenity (Loss of Amenities and Disfigurement)	₹ 15,000/-	₹ 50,000/-
	Total	₹ 95,500/-	₹ 1,45,500/-

14. The overall compensation is thus enhanced from 95,500/- to ₹1,45,500/- which shall carry interest @ 9% per annum from the date of filing of the Petition till the date of payment.
15. Respondent No.3 Oriental Insurance Company Limited is directed to deposit the enhanced amount along with interest in the name of the Appellant in UCO Bank, Delhi High Court, New Delhi within six weeks.
16. 50% of the enhanced compensation along with proportionate interest shall be released to the Appellant immediately and rest 50% along with proportionate interest shall be held in fixed deposit for a period of three years.
17. The Appeal is allowed in above terms.

(G.P. MITTAL)
JUDGE

MAY 03, 2012

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