

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

Date of decision: 7th September, 2012

+ **MAC.APP. 563/2011**

GIRIRAJ Appellant

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

versus

RIYAZ AHMED & ORS. Respondents

Through: Ms. Shantha Devi Raman, Adv. 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 ₹1,65,980/- awarded in favour of the Appellant for having suffered injuries in a motor vehicle accident which occurred on 28.04.2006.
2. In the absence of any Appeal by the driver, owner or the Insurer, the finding on negligence has attained finality between the parties.
3. The Appellant suffered multiple injuries on his right leg resulting in amputation of the first toe of his right foot. He remained admitted in Safdarjung Hospital from 29.04.2006 to 07.06.2006 (Ex.PW-1/1-2). The Appellant was operated upon in the hospital and POP cast was put on the right leg. A Disability Certificate Ex.PW-2/A was issued to the Appellant whereby he was declared to have suffered 42% permanent disability in relation to the right lower limb on account of the fracture of

supracondylar right femur with fracture of right lateral tibial condyle lateral condyle right tibia with fixed equinovarus right foot with amputation of the first toe of the right foot.

4. The Appellant claimed that he was working as a labourer and was earning ₹5,000/- per month. He stated that on account of the disability he became jobless.
5. The following contentions are raised on behalf of the Appellant:-
 - (i) The compensation of 30% towards loss of earning capacity is on the lower side. Keeping in view the disability, he should have been awarded compensation towards loss of earning capacity to the extent of 100%.
 - (ii) No compensation was awarded to him for loss of income till the time he was unable to perform any work.
 - (iii) No compensation was awarded towards loss of amenities in life and disfigurement.
6. Section 168 of the Motor Vehicles Act, 1988 (the Act) enjoins the Claims Tribunal to award just and reasonable compensation.
7. In *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors*, (1994) 2 SCC 176, the Supreme Court observed that 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. At the same time, a misplaced sympathy, generosity and benevolence cannot be the guiding factor for determining the compensation. The object of providing compensation is to place the claimant(s), to the extent possible, in almost the same financial position, as they were in before the accident and not to make a fortune out of the misfortune that has befallen them.

8. The Claims Tribunal dealt with the award of compensation on account of loss of earning capacity in Para 13 of the impugned judgment which is extracted hereunder:-

“13. The petitioner has stated that he used to work as a Junk Dealer. The disability certificate of petitioner refers to 42% disability with reference to his Right lower limb. However, the said disability is not in regard to the entire body. Dr. N. Laisram, Sr.Specialist, Safdarjung Hospital was examined as PW2 and she has also clarified that the disability of the petitioner will positively effect his avocation and she further deposed that the said disability of the petitioner was not in relation to his entire body and stated that she was unable to give any opinion regarding the extent of disability in relation to whole body of the petitioner. Taking into account the nature of job which the petitioner was doing at the time of accident, it appears to me upon appreciation of the entire circumstances that the avocation of the petitioner might have suffered to the tune of 30% due to disability caused by the accident. The petitioner has claimed to be earning ₹5,000/- pm. However, the petitioner has not placed on record even a single document showing his monthly income or qualification. In the absence of any cogent evidence on record, his monthly income can be taken to be the minimum wage of an unskilled workman as notified by Delhi Government and the same was ₹3,271/- at the time of accident. According to the copy of voter I-Card Mark ‘C’ the age of the petitioner was 49 years as on 01.01.1996 and the accident held in the year 2006 so it can be said that he was around 59 yes old at the time of accident for which the multiplier, in terms judgment of the Hon’ble Supreme Court of India in Sarla Verma v. DTC decided on 15.4.2009 in CA No.3483/08, can very well be

taken as 09. Therefore, total loss of income and compensation on account of disability comes to be 3,271/- x 12 x 09 x 30% = ₹1,05,980.4/- which is rounded off as ₹1,05,980/-."

9. The Appellant produced Dr. N. Laisram, Senior Specialist as PW-2. She testified that the disability will definitely affect the Appellant's vocation. She, however, could not give the exact impact of the disability on the Appellant's earning capacity. Since the Appellant was a labourer and he suffered 42% permanent disability on account of multiple fractures and amputation of the first toe of his right foot and loss of strength in the right lower limb, in my view, loss of earning capacity should be taken as 42% in respect of the whole body as against 30% taken by the Claims Tribunal.
10. The loss of earning capacity thus comes to ₹1,48,372/- (3271/- x 12 x 09 x 42%).
11. From the discharge slip Ex.PW-1/1 it is proved that the Appellant remained admitted in Safdarjung Hospital for one month and eight days. He was discharged after surgery and right leg was put in POP cast. The Appellant must have taken six months to recover fully from the injuries. Thus, he is awarded compensation of ₹ 19,626/- (₹3271/- x 6) towards loss of income for six months.
12. No compensation was awarded to the Appellant towards disfigurement, loss of amenities and loss of enjoyment of life. In view of the disability of 42% and amputation of his right toe, I would make a provision of ₹75,000/- towards loss of amenities and expectations in life and disfigurement.
13. The compensation is re-computed as under:-

Sl.No.	Compensation under various heads	Awarded by this Court
1.	Treatment Expenses	₹5,000/-
2.	Pain and Suffering	₹ 50,000/-
3.	Special Diet & Conveyance	₹ 5,000/-
4.	Permanent Disability & Loss of Future Income	₹ 1,48,372/-
5.	Loss of Income for six months	₹ 19,626/-
6.	Loss of Amenities & Expectations in Life and Disfigurement	₹ 75,000/-
	Total	₹ 3,02,998/-

14. The compensation stands enhanced by ₹1,37,018/- which shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.
15. Respondent No.3 National Insurance Company Limited is directed to deposit the enhanced compensation along with interest in UCO Bank, Delhi High Court Branch, New Delhi within six months.
16. Eighty percent of the enhanced compensation shall be held in fixed deposit for a period of two years and four years in equal proportion. Rest 20% shall be released on deposit
17. The Appeal is allowed in above terms.

(G.P. MITTAL)
JUDGE

SEPTEMBER 07, 2012

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