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

Date of decision: 21st May, 2012

+ **MAC. APP No.770/2011**

NATHU LAL

Through:

Versus

..... Appellant

Mr. Santosh Chauriha,
Advocate

SANDEEP GULATI & ORS.

Through:

..... Respondents

Mr. V.C. Jha with Ms.Sonia
Sharma, Advocates for the
Respondent No.3 Insurance
Company

WITH

+ **MAC. APP No.855/2011**

CHANDA SINGH

Through:

Versus

..... Appellant

Mr. Santosh Chauriha,
Advocate

SANDEEP GULATI & ORS.

Through:

..... Respondents

Mr. V.C. Jha with Ms.Sonia
Sharma, Advocates 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. These two Appeals for enhancement of compensation arise out of a common judgment dated 10.02.2011 whereby a

compensation of ₹18,314/- and ₹41,212/- was awarded in favour of Appellants Nathu Lal and Chanda Singh respectively.

2. On 04.07.2010, both the Appellants who were working in Delhi Police, were proceeding on their motorcycle No. RJ-32-M-6899. The two-wheeler was being driven by the Appellant Nathu Lal Yadav while Appellant Chanda Singh was sitting on the pillion. At about 3:15 pm, when they reached at Rama Road, Near Police Station Kirti Nagar, their two-wheeler was struck by a Honda Car No.DL-4CF-9647 which was being driven by the First Respondent in a rash and negligent manner. Both the Appellants fell down from the two-wheeler, they suffered injuries and were removed to DDU Hospital. The Claims Tribunal on analysis of the evidence produced by the Appellants found that the accident was caused on account of the rash and negligent driving of the Honda car by the First Respondent. This finding is not challenged by the driver, owner or the insurer.
3. It is urged by the learned counsel for the Appellants that full compensation towards loss of leave was not awarded. The compensation awarded towards pain and suffering is on the lower side.
4. The Claims Tribunal dealt with the issue of compensation with respect to Appellant (Chanda Singh) and Appellant (Nathu Lal) in paras 14 to 17 and 19 to 21 respectively, which are extracted hereunder:

“14. The medical record of the petitioner more particularly the discharge slip of petitioner, Ex.PW1/2 dated 23/04/10 of the petitioner in the first petition suggests that he had got mild wedging of L1 involving upper end plate with mild reduction of D12/11 disc space. The petitioner had got injuries on his back bone. The petitioner has filed the medical bills to the tune of ₹11,212/-. Therefore, I hereby award a sum of ₹11,212/- towards medical bills keeping in view the nature of injuries and medical bills placed on record.

PAIN AND SUFFERINGS:

15. It is settled law that a particular amount cannot be fixed on pain and sufferings for all cases as it varies from case to case. Judicial notice can be taken on the fact that since the petitioner had got injuries/fracture as aforesaid, he might have suffered acute pain and sufferings owing to the said injuries. He might have also consumed heavy dose of anti-biotic etc. and also might have remained without movements of his body for a considerable period of time. In order to ascertain the pain and sufferings compensation, I am guided by the judgment of Hon’ble High Court of Delhi in case Satya Narain v. Jai Kishan, FAO No.709/02, date of decision: 2.2.2007, Delhi High Court by Hon’ble Mr. Justice Pradeep Nandrajog wherein it was held that:-

“On account of pain and suffering, suffice would it be to note that it is difficult to measure pain and suffering in terms of a money value, However, compensation which has to be paid must bear some objectives co-relation with the pain and suffering.

The objective facts relatable to pain and suffering would be:

- (a) Nature of injury.*
- (b) Body part affected.*

(c) *Duration of the treatment.*”

16. Keeping in view the said guidelines and keeping in view the aforesaid observation made by this court, I hereby allow ₹15,000/- towards pain and sufferings and loss of amenities of life. Besides this, I hereby award a sum of ₹5000/- towards special diet and conveyance.

LOSS OF LEAVE:

17. The petitioner had suffered no loss of income as he was working as Constable in Delhi Police. However, he had to take leave for around two months. Accordingly, I hereby grant ₹10,000/- to the petitioner as compensation for loss of leave.

The total compensation is assessed as under:-

Treatment expenses:	₹11,212/-
Pain and sufferings:	₹15,000/-
Special diet and conveyance	₹5,000/-
Loss of leave:	₹10,000/-
Total	₹41,212/- “

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“19. The medical record of the petitioner in the second petition suggest that he had got STI over left foot. The petitioner has filed the medical bills to the tune of ₹1314/-. Therefore, I hereby award a sum of ₹1314/- towards medical bills keeping in view the nature of injuries and medical bills placed on record.

PAIN AND SUFFERINGS:

20. Keeping in view the said guidelines and keeping in view the aforesaid observation made by the court, I hereby allow ₹7,000/- towards pain and

sufferings and loss of amenities of life. Besides this, I hereby award a sum of ₹3,000/- towards special diet and conveyance.

LOSS OF LEAVE:

21. The petitioner had suffered no loss of income as he was working as Sub Inspector in Delhi Police. However, he had to take leave for around 18 days. Accordingly, I hereby grant ₹7,000/- to the petitioner as compensation for loss of leave.

The total compensation is assessed as under:-

<i>Treatment expenses:</i>	<i>₹1,314/-</i>
<i>Pain and sufferings:</i>	<i>₹7,000/-</i>
<i>Special diet and conveyance</i>	<i>₹3,000/-</i>
<i>Loss of leave:</i>	<i>₹7,000/-</i>
<i>Total</i>	<i>₹18,314/-</i>

5. Thus, it can be seen that the Appellant Chanda Singh suffered fracture of spine. He got mild wedging of L1 involving the upper plate with mild reduction of D-12/11 disc space. He suffered injuries on his back. The Appellant got himself discharged from the DDU Hospital on the same day and got himself admitted in Bharat Hospital, Sonapat on 06.07.2010. He was discharged from that Hospital on 10.07.2010. He was advised bed rest and, therefore, had to take 48 days leave which is established from the record. The entire treatment charges (amounting to ₹11,212/-) was granted by the Claims Tribunal. A further sum of ₹15,000/- was awarded towards pain and suffering which, in the facts and circumstances of the case and

considering the nature of the injuries and the period of treatment, seems to be just and reasonable.

6. It is established on record that Appellant (Chanda Singh) had to obtain 48 days leave. The Claims Tribunal awarded a compensation of ₹10,000/- towards the same. The Claims Tribunal in awarding this compensation of ₹10,000/- has not given any reason. His salary in Delhi Police as a Constable was ₹29,397/-. He was, therefore, entitled to a sum of ₹39,000/- towards loss of leave. Thus, there is an enhancement of ₹29,000/- in the case of the Appellant Chanda Singh (MAC APP. No.85/2011).
7. The Appellant Nathu Lal was removed to DDU Hospital immediately after the accident. He was discharged from the Hospital after administering him requisite treatment on the same day. He suffered crush injuries on his left foot. The Claims Tribunal awarded him a sum of ₹1,314/- towards the treatment charges (as per the actual expenses), a sum of ₹7,000/- towards pain and suffering and ₹3,000/- towards special diet and conveyance. It was proved that the Appellant (Nathu Lal) had obtain 18 days leave. The compensation of ₹7,000/- towards pain and suffering and ₹3,000/- towards special diet and conveyance was just and reasonable. Here again, the compensation for loss of leave ought to have been granted to the Appellant as per his salary on the date of the accident which was ₹25,614/-. He is awarded a sum of ₹14,000/- towards loss

of leave as claimed. Thus, there is an enhancement of ₹7,000/- in his case.

MAC. APP. 770/2011

8. In view of the above discussion, the Appellant(Nathu Lal) is held entitled to an enhanced compensation of ₹7,000/- which shall carry interest @ 7.5% per annum from the date of the filing of Petition till its payment. The enhanced compensation along with interest shall be deposited with the concerned Claims Tribunal by the Respondent No.3 Insurance Company within six weeks, which shall be released immediately in favour of the Appellant on its deposit.

9. The Appeal is allowed in above terms.

MAC. APP. 855/2011

10. In view of the above discussion, the Appellant(Chanda Singh) is held entitled to an enhanced compensation of ₹29,000/- which shall carry interest @ 7.5% per annum from the date of the filing of Petition till its payment. The enhanced compensation along with interest shall be deposited with the concerned Claims Tribunal by the Respondent No.3 Insurance Company within six weeks, which shall be released immediately in favour of the Appellant on its deposit.

11. The Appeal is allowed in above terms.

(G.P. MITTAL)
JUDGE

MAY 21, 2012

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