

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

Date of decision: 4th July, 2012

+ **MAC.APP. 762/2011**

NARAYAN BAHADUR Appellant
Through: Mr. M.K. Sinha, Advocate

versus

SUMIT GUPTA & ANR Respondent
Through: None

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 ₹93,207/- awarded in favour of the Appellant Narayan Bahadur for having suffered injuries in a motor vehicle accident which occurred on 16.04.2007.
2. On the aforesaid day, at about 7:45 PM the Appellant was waiting for a bus at bus stand Moti Bagh-I, Ring Road. A Santro car No.DL-3CAB-6440 being driven by Respondent Sumit Gupta in a rash and negligent manner came from the side of Dhaula Kuan and dashed against the Appellant. As a result of the forceful impact, the Appellant fell down and suffered multiple grievous injuries all over his body, particularly, on his head. The Appellant was removed to Safdarjang Hospital

where he remained as an Indoor patient for about one month and Outdoor patient for about two years.

3. The Appellant claimed that he was aged about 16 years and was working as a labourer and was earning ₹4,000/- per month. Because of the injuries suffered, he was unable to attend to the work for about two years.
4. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of a Santro car by the First Respondent and held that the Appellant was entitled to damages for the loss suffered by him. The Claims Tribunal awarded a compensation of ₹93,207/- which is detailed hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Medical Treatment	₹ 13,207/-
2.	Special Diet, Attendant & Conveyance Charges	₹ 30,000/-
3.	Loss of Income	₹ 20,000/-
4.	Pain and Sufferings & Enjoyment of Life	₹ 30,000/-
	Total	₹ 93,207-

5. In the absence of any Appeal by the First Respondent (the

owner-cum-driver of the Santro Car) and the Insurance Company (Respondent No.2), the finding on negligence has become final between the parties.

6. It is urged by the learned counsel for the Appellant that the compensation awarded is low and meager and needs enhancement.
7. The following contentions are raised on behalf of the Appellant:-
 - (i) The Appellant spent a sum of ₹1,55,000/- on his medicines, ₹30,000/- on special diet and ₹10,000/- on conveyance. The Claims Tribunal erred in deducting the expenditure towards the treatment in respect of some of the bills on the ground that the payment might have been reimbursed by CGHS. A consolidated compensation of ₹30,000/- awarded towards Special Diet, Attendant Charges and Conveyance charges is wholly inadequate.
 - (ii) The Appellant was unable to attend to his work for about two years. The compensation of ₹20,000/- awarded towards loss of income was very low.
8. I have perused the cash memos Ex.PW-1/48-49, PW-1/51-53 and PW-1/58-63 which were disallowed by the Claims Tribunal. In the column “prescribed by doctor” it is mentioned CGHS. In other cash memos also it is mentioned “Prescribed

by Safdarjang Hospital”. A perusal of the prescription Ex.PW-1/1 to PW-1/9 shows that on the top of the OPD slip the words “Safdarjang Hospital, New Delhi” is written. In the Fourth line the words “CGHS token number” are mentioned. This column in the case of the Appellant has been left blank. It is, therefore, evident that the Appellant was not a CGHS beneficiary as CGHS token number was not mentioned. The column “prescribed by CGHS” was written because of presence of these words on the OPD card. The Claims Tribunal’s findings that these bills might have been reimbursed by the CGHS department without any material is not tenable.

9. Although, the Appellant claimed that a sum of ₹1,55,000/- was spent on the treatment yet when the bills were totalled up (by the learned counsel for the Appellant) on a separate sheet (now attached with the paper book) all the cash memo including the payment charges in the hospital totalled ₹16,142.33P.
10. The Appellant was a poor person and might not have retained some of the bills. In the circumstances, I award him a sum of ₹20,000/- as compensation for the amount spent on his treatment as Indoor and Outdoor patient (including purchase of medicine) in Safdarjang Hospital.
11. The Appellant was admitted to Safdarjang Hospital with the history of unconscious $E_1 V_1 M_4$. This equation is a result of a Glassgow Coma Scale which is a neurological scale which aims

to give a reliable objective way of recording the conscious state of a person for initial as well as subsequent assessment. So according to the scale E_1 would mean “no eye opening”, V_1 would mean “no verbal response” and M_4 would mean flexion/withdrawal to pain. Further, his pupils were sluggish to react. Therefore, all this would suggest that the injured was in a very serious condition when he was admitted in the Safdarjang Hospital. He was put on antibiotics, dilantin and mannitol. The Appellant was discharged from the hospital after one month i.e. on 16.05.2007. A perusal of the OPD card Ex.PW-1/3 to PW-1/9 shows that the Appellant was under treatment in Department of Psychiatry, Safdarjang Hospital till March, 2010. Because of the head injury, the Appellant complained of weakness of right and upper lower limb. The doctor opined of his aggressive behaviour on the OPD cards Ex.PW-1/5 dated 28.03.2009 and Ex.PW-1/6 dated 02.08.2008. The OPD cards Ex.PW-1/3 to PW-1/9 would show that there were atleast 60 visits to the hospital. Considering the period of hospitalization, the nature of injury suffered, it is reasonable to hold that the Appellant needed services of an Attendant.

12. It is well settled that a victim of an accident has to be compensated in terms of money even if gratuitous services are rendered by a family member.
13. In *Delhi Transport Corporation and Anr. v. Lalita AIR 1981 Delhi 558*, this Court held that there cannot be any deduction if

domestic help is obtained from a family member. The High Court observed as under:-

“.....A wrong doer cannot take advantage of this ‘domestic element’. If the mother renders service to her, instead of a nurse, it is right and just that she should recover compensation for the value of the services that the mother has rendered to her. Mother’s services were necessitated by the wrong doing and the injured should be compensated for it. (Cunnigharn v. Harrison 3 All E.R. 463) The services of a wife and mother are worth more than those of a house-keeper because she is in constant attendance and does many more things than a house-keeper. (Regan v. Williamson (1976) 2 All E.R. 241).”

14. The minimum wages of an unskilled worker on the date of the accident were ₹3470/-. Considering the injuries suffered, I would award a sum of ₹14,000/- (3500/- x 4) on account of Attendant Charges for four months, even if, the gratuitous services were rendered by some or the other family members.
15. A lumpsum compensation of ₹10,000/- was awarded towards conveyance, attendant charges and special diet. I have already provided for attendant charges. I further make a provision of ₹10,000/- towards the conveyance charges. Considering the prolonged treatment, compensation of ₹20,000/- is also awarded towards special diet.
16. Although, the Appellant’s case is that he was unable to attend to his work (manual labour) for about two years. Taking into

consideration the fact that the Appellant remained hospitalized for about one month on account of the head injury and remained under treatment in Safdarjang Hospital for about three years (Ex.PW-1/1 to PW-1/24), I hold that he was unable to attend his work for atleast 12 months. The minimum wages of an unskilled worker, as stated earlier, were ₹3470/- which is rounded off to ₹3500/-. I award a compensation of ₹42,000/- (3500/- x 12) towards loss of income.

17. No other contention has been raised.

18. The overall compensation is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Medical Treatment	₹ 13,207/-	₹ 20,000/-
2.	Special Diet	₹ 30,000/-	₹ 20,000/-
	Attendant Charges		₹ 14,000/-
	Conveyance Charges		₹ 10,000/-
3.	Loss of Income	₹ 20,000/-	₹ 42,000/-
4.	Pain and Sufferings & Enjoyment of Life	₹ 30,000/-	₹ 30,000/-
	Total	₹ 93,207/-	₹ 1,36,000/-

19. The compensation is thus enhanced from ₹93,207/- to

₹1,36,000/-. The enhanced compensation of ₹42,793/- shall carry interest @ 7.5% per annum as awarded by the Claims Tribunal which, shall be deposited in the name of the Appellant with the Claims Tribunal within six weeks and held in fixed deposit for a period of one year.

20. The Appeal is allowed in above terms.

(G.P. MITTAL)
JUDGE

JULY 04, 2012

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