

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

Date of decision: 17th September, 2012

+ **MAC. APP. 833/2011**

SHANKAR PASWAN Appellant
Through: Mr. S.N. Parashar, Adv.

versus

SHYAM LAL & ORS. Respondents
Through Mr. J.P.N. Shahi, 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 ₹8,88,999.88P/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the Appellant for having suffered injuries resulting in permanent disability to the extent of 85%.
2. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of bus No.DL-1PA-4935 by the First Respondent. While dealing with the quantum of compensation, the Claims Tribunal dealt with the various heads and awarded a compensation which is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Loss of Income	₹39,262.80/-

2.	Loss of Earning Capacity due to Disability	₹ 5,33,974.08/-
3.	Medicines & Medical Treatment	₹ 1,35,763/-
4.	Pain and Suffering	₹ 50,000/-
5.	Loss of Marriage Prospects	₹ 50,000/-
6.	Conveyance, Special Diet & Attendant	₹ 30,000/-
7.	Loss of Amenities of Life	₹ 50,000/-
	Total	₹ 8,88,999.88P/-

3. In the absence of any Appeal by the driver, owner or the Insurer, the finding on negligence has attained finality.
4. The following contentions are raised on behalf of the Appellant:-
 - (i) On account of the disability suffered by the Appellant he was entitled to compensation on the basis of 100% loss of earning capacity with addition of 30% on account of inflation on the basis of Supreme Court report in *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559.
 - (ii) No compensation was awarded to the Appellant towards Attendant Charges although, it was established that the Appellant would be unable to move of his own.
 - (iii) The compensation awarded towards non pecuniary damages and towards conveyance and special diet is on the lower side.

5. Section 168 of the Motor Vehicles Act, 1988 (the Act) enjoins a Claims Tribunal to determine the amount of compensation which is just and reasonable.
6. In *General Manager, Kerala Road Transport Corporation, Trivandrum v. Susamma Thomas & Ors.*, (1994) 2 SCC 176, the Supreme Court 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.”

7. The trend of the Superior Courts is to award full and fair compensation. In the case of *Raj Kumar v. Ajay Kumar & Anr.*, 2011 (1) SCC 343, the Supreme Court observed that the object of awarding damages is to make good the loss suffered as a result of the wrong done as far as money can do in a fair, reasonable and equitable manner. Paras 5 and 6 of the report are extracted hereunder:-

“5. The provision of the Motor Vehicles Act, 1988 ('the Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This

means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. [See C.K. Subramonia Iyer v. T. Kunhikuttan Nair, AIR 1970 SC 376, R.D. Hattangadi v. Pest Control (India) (P) Ltd., 1995 (1) SCC 551 and Baker v. Willoughby, 1970 AC 467.]”

8. In *Kavita v. Deepak & Ors.*, Civil Appeal No.5945/2012 decided on 22.08.2012, the Supreme Court laid down that an attempt should always be made to award adequate compensation not only for physical injury and treatment but also for the loss of earning and inability to lead a normal life and enjoy the amenities, which would have been enjoyed but for the disability caused due to the accident.

LOSS OF EARNING CAPACITY

9. While dealing with the question of loss of earning capacity due to disability, the Claims Tribunal held as under:-

“49. The petitioner has produced the permanent disability certificate, Ex.PW1/27 which shows that he has 85 % disability to substantiate his claim. This certificate has not been disputed by the respondents. PW4 has also deposed that the petitioner has suffered post accidental deformity of both lower limbs, not able to stand, right eye corneal opacity with thysis bulbil and will always need and attendant.

50. In the judgment reported as New India Assurance Company Limited v. Shanti Pathak, III (2007) ACC 505 (SC), it was held that the multiplier to be adopted is to be determined on the basis of the age of the claimant. As the age of the petitioner at the time of accident was 32 at the time of accident, the appropriate multiplier should be 16. Therefore, the total compensation to be awarded under this heading is the annual income multiplied by the appropriate multiplier multiplied by the percentage of disability.

51. Accordingly, the compensation is Rs.3,271.90 x 12 x 17 x 85 % which totals to Rs.5,33,974.08 is awarded under this head.”

10. I have before me the testimony of Dr. Rajesh Kumar Singh, PW-4 who apart from deposing about the Appellant's disability, testified that on account of the deformity of both the lower limbs, the Appellant will not be able to stand. Thus, it is evident that the Appellant is unable to carry out any work at all.
11. 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 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."

12. Thus, in the instant case, the Appellant is entitled to compensation on the basis of 100% loss of earning capacity and an addition of 30% on account of inflation on the basis of Supreme Court judgment in *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559. The loss of earning capacity comes to ₹8,26,675/- (₹3312/- + 30% x 12 x 16) as against a compensation of ₹5,33,974.08P awarded by the Claims Tribunal.

ATTENDANT CHARGES

13. I have observed earlier that the Appellant is unable to stand of his own. Thus, he would always need assistance of an Attendant to carry out his day to day activities.
14. In *Delhi Transport Corporation and Anr. v. Lalita* AIR 1981 Delhi 558, a Division Bench of this Court held that a victim cannot be deprived of compensation towards gratuitous services rendered by some family

members for the benefit of the tortfeasor. In the circumstances, I award a compensation of ₹ 1,000/- per month towards Attendant charges. On applying the multiplier of 16, the Attendant Charges comes to ₹1,92,000/- (₹1000/- x 12 x 16).

15. Immediately after the accident, the Appellant was removed to Safdarjung Hospital with fracture of pelvis and fracture of sit bone right. He underwent successive surgeries. After his admission in the hospital, skin grafting with external fixator was done. The external fixator was removed on 11.08.2006 by another surgery. Thereafter, the Appellant remained under treatment of Dr. Anand Shanker in Life Line Nursing Home, Gaya. Taking into account the period of hospitalization and the long duration of the treatment, the compensation of ₹50,000/- awarded towards pain and suffering was on the lower side, the same is enhanced to ₹75,000/-.
16. The Claims Tribunal awarded compensation of ₹30,000/- towards conveyance, special diet and Attendant charges. I have already hereinabove awarded a compensation of ₹1,92,000/- towards the Attendant Charges. I would make a provision of ₹15,000/- each towards special diet and conveyance.
17. The Claims Tribunal awarded a sum of ₹50,000/- towards loss of amenities in life and ₹50,000/- towards loss of marriage prospects. In *Raj Kumar* it was held as under:-

“15. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of

amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.”

18. In the circumstances, the award of ₹50,000/- awarded towards loss of amenities is reduced to ₹25,000/- and the compensation of ₹50,000/- awarded towards marriage prospects is enhanced to ₹75,000/-.
19. Since the Appellant has been granted compensation towards loss of earning capacity to the extent of 100%, the compensation of ₹39,262.80P (there is some clerical mistake) awarded towards loss of income for the period of three months would be duplication in the award. The same is therefore excluded from the total amount of compensation.
20. The compensation awarded is re-computed as under:-

Sl.No.	Compensation under various heads	Awarded by this Court
1.	Loss of Earning Capacity due to Disability	₹8,26,675/-
2.	Medicines & Medical Treatment	₹ 1,35,763/-
3.	Pain and Suffering	₹75,000/-
4.	Loss of Marriage Prospects	₹ 75,000/-
5.	Loss of Amenities of Life	₹ 25,000/-
6.	Attendant Charges	₹1,92,000/-
7.	Special Diet	₹15,000/-
8.	Conveyance	₹15,000/-
	Total	₹ 13,59,438/-

21. The overall compensation is thus enhanced from ₹8,88,999.88P/- to ₹13,59,438/-.

22. The enhanced compensation of ₹ 4,70,438.12P/- shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.
23. The enhanced compensation along with interest shall be deposited with the UCO Bank, Delhi High Court Branch, New Delhi within six weeks in the name of the Appellant.
24. Eighty percent of the enhanced compensation shall be held in fixed deposit for a period of three years, six years, nine years, twelve years and fifteen years in equal proportion. Rest 20% shall be released on deposit.
25. The Appeal is allowed in above terms.
26. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

SEPTEMBER 17, 2012

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