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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 29th May, 2012

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MAC. APP. No.382/2008

DROPTI

..... Appellant

Through: Mr. Nitinjay Chaudhary,
Advocate

Versus

NATIONAL INSURANCE COMPANY LIMITED AND ORS.

..... Respondents

Through: Mr. S.L. Gupta with Mr. Ram
Ashray, Advocates for the
Respondent No.1 Insurance
Company.

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 ₹4,01,000/- awarded to the Appellant (now deceased) through her legal representatives for having suffered injuries in an accident which occurred on 05.11.2003.
2. On 05.11.2003 at about 4:15 pm while crossing the Ring Road at ISBT Sarai Kale Khan, the Appellant was hit by a Haryana Roadways bus No.HR-66-0204 which was being driven in a rash and negligent manner by its driver (the Respondent No.3).

3. The Motor Accident Claims Tribunal (the Claims Tribunal) by the impugned judgment awarded a total compensation of ₹4,01,000/-, which is tabulated hereunder:

Sl.No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Medical Treatment	₹85,000/-
2.	Conveyance Charges	₹10,000/-
3.	Special Diet	₹10,000/-
4.	Pain and Agony	₹50,000/-
5.	Attendant Charges	₹36,000/-
6.	Permanent Disability Loss of Amenities of Life	₹25,000/-
7.	Loss of Income	₹1,85,000/-
	Total	₹4,01,000/-

4. It is urged by the learned counsel for the Appellant that considering the nature of injuries, duration of the treatment, leave of 37 months obtained by the Appellant, it would be apparent that the compensation of ₹ 50,000/- awarded towards pain and suffering, ₹25,000/- towards amenities of life, ₹10,000/- each towards conveyance charges and special diet was on the lower side. It is urged that the Appellant's income was proved to be ₹11,073/- per month. The Claims Tribunal erred in awarding a compensation of ₹1,85,000/- @ ₹5,000/- per

month instead of ₹11,073/- p.m. which was duly approved by the Appellant's employer.

5. In the absence of any Appeal by any of the Respondents, finding on negligence has attained finality. My task is to find out if the compensation awarded needs any enhancement.
6. The Appeal must succeed.
7. The discharge summaries Exs.PW1/1 to PW1/5 (for different period of hospitalization) reveal that the Appellant suffered supracondylar (Rt.) femur with quadriparesis and bladder bowel involvement, supra condylar (Rt.) femur with Quadriparesis with right cerebello pontine angle meningioma. The Appellant underwent several surgeries one after the other. The Claims Tribunal dealt with the treatment received by the Appellant in para 28 of the impugned judgment, which is extracted hereunder:

“28. The petitioner in his testimony as PW4 had deposed that immediately after the accident she was rushed to AIIMS hospital but there being no bed available, she was taken to Safdarjung hospital. She remained under treatment till 14.11.2003. She was not satisfied with the treatment given and took her discharge from the Safdarjung hospital and the discharge summary of the Safdarjung hospital is Ex.PW4/1. On the same day she got herself admitted at St. Stephen's hospital where she remained under treatment till 26.02.2004. The discharge summary of St. Stephen's hospital is Ex PW1/1. She thereafter continued with her follow up treatment till 19.4.2004

and visited the hospital after every fortnight. She was admitted in St. Stephen's hospital on 19.4.2004 and remained under treatment till 11.5.2004. The discharge summary of St. Stephen's hospital is Ex PW1/3. She was admitted in St. Stephen's hospital for third time on 20.2.2005 till 4.3.2005 and the discharge summary of St. Stephen's hospital is Ex.PW1/7. She got admitted in the St. Stephen's hospital for the 4th time on 30.5.2005 till 1.7.2005 and the discharge summary of St. Stephen's hospital is Ex. PW1/5. In between she remained on bed rest and regularly visited the hospital for follow up treatment."

8. The Appellant's condition after the accident was really bad. As has been observed by the Claims Tribunal, the Appellant was not satisfied with the treatment being given to her in Safdarjang Hospital till 14.11.2003. She got herself discharged from Safdarjang Hospital on that day and got herself admitted in St. Stephen Hospital. Initially, she remained admitted there upto 26.02.2004. She continued to receive the treatment till 16.04.2008. She was readmitted in St. Stephen Hospital on 19.04.2004 and was discharged on 11.05.2004. She was then admitted again on 20.02.2005 to 04.03.2005 and 30.05.2005 to 01.07.2005. The Appellant underwent several surgeries during this period and had to undergo pain and suffering not only due to surgeries and hospitalization but during the follow-up treatment also.
9. It is difficult to measure the pain and suffering in terms of money which has been suffered by the claimant on account of

serious injuries caused to him in a motor accident. Since the compensation is required to be paid for pain and suffering an attempt must be made to award compensation which may have some objective relation with the pain and suffering underwent by the victim of a motor accident. For this purpose, the Claims Tribunal and the Courts normally consider the nature of injury; the parts of the body where the injuries were sustained; surgeries (if any) underwent by the victim; confinement in the hospital and the duration of the treatment. Considering the nature of injuries, the period of hospitalization and long duration of the treatment, the compensation of ₹50,000/- awarded towards the pain and suffering was on the lower side. The same is enhanced from ₹50,000/- to ₹75,000/.

10. As per disability the Appellant suffered permanent disability in respect of her right lower limb to the extent of 30% on account of stiff knee. The compensation of ₹25,000/- awarded considering the serious nature of injuries mentioned earlier is on the lower side. The same is enhanced to ₹75,000/-. Considering the duration of treatment, the compensation awarded towards special diet and conveyance is raised from ₹10,000/- each to ₹20,000/- each.
11. The bone of contention is the award of compensation towards loss of income. It is established on record that the Appellant had to take 37 months leave. The Claims Tribunal accepted the same and awarded compensation for loss of income for 37

months @ ₹5,000/- per month. The Claims Tribunal declined to accept the Appellant's salary to be ₹11,073/-. The reason given in para 38 of the impugned judgment is extracted hereunder:

“38. The petitioner in her testimony had deposed that her gross monthly salary is ₹11,043/- while she was working as Safai Karamchhari with India Trade Promotion Organisation. The petitioner had failed to prove her salary on record. Even PW2 the witness examined from the department had also not produced the salary record of the petitioner. The petitioner in her cross examination had admitted that she is now getting salary of ₹6000/- per month. Therefore, her net salary may be taken as ₹5000/- per month for 37 months. She is awarded a sum of ₹1,85,000/- (₹5000/- x 37 months) towards her loss of income.”

12. It may be noticed that in the Claim Petition, the Appellant described her salary to be ₹9,000/- per month plus perks, which was not traversed by the Respondent Insurance Company specifically or by necessary implication. PW2 B.K. Garg, Deputy Manager, Administration, ITPO testified that in October, 2003 Appellant's gross salary was ₹11,073/-. This part of PW2's testimony was not challenged in the cross-examination. It was not suggested to him if it included any arrears from previous month. In her examination-in-chief, the Appellant testified her salary to be ₹11,073/- per month. Her admission in the cross-examination that she was getting a salary of ₹6,000/- per month or that she used to get ₹7,000 to 8,000/- in cash was the carry home salary after deduction towards GPF,

Group Insurance and Advances, if any, taken by an employee. In the absence of any cross-examination of PW2 on this aspect, I would accept the Appellant's salary on the date of the accident to be ₹11,073/-. Thus, she would be entitled to ₹4,63,710/- instead of ₹1,80,000/- awarded by the Claims Tribunal towards loss of income for 37 months.

13. The overall compensation awarded is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Medical Treatment	₹85,000/-	₹85,000/-
2.	Conveyance Charges	₹10,000/-	₹20,000/-
3.	Special Diet	₹10,000/-	₹20,000/-
4.	Pain and Agony	₹50,000/-	₹75,000/-
5.	Attendant Charges	₹36,000/-	₹36,000/-
6.	Permanent Disability Loss of Amenities of Life	₹25,000/-	₹75,000/-
7.	Loss of Income	₹1,85,000/-	₹4,09,701/-
	Total	₹4,01,000/-	₹7,20,701/-

14. Thus, the compensation is enhanced by ₹3,19,701/- which shall carry interest @ 7.5% per annum as granted by the Claims Tribunal.

15. The Appellant died during the pendency of the Appeal. The enhanced compensation shall be payable to the legal representatives of the deceased Appellant in equal proportion.
16. The Respondent No.1 National Insurance Co. Ltd. is directed to deposit the enhanced compensation along with interest in UCO Bank, Delhi High Court Branch in the name of the legal representatives of the deceased Appellant within six weeks.
17. The Appeal is allowed in above terms.
18. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

MAY 29, 2012
pst