

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

Date of decision: 10th October, 2012

+ **MAC. APP. 201/2011**

MOHD. FAKRUDDIN ANSARI Appellant

Through: Mr. I.A. Rahmani, Adv. with
Mr. Ekram Ali Ansari, Adv.
Appellant in person.

versus

DELHI TRANSPORT CORPORATION & ANR. Respondents

Through Ms. Sushma Adv. for
Mrs. Bhakti Paserija Sethi, Adv. for R-1.
Ms. Hetu Arora Sethi, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant seeks enhancement of compensation of ₹3,97,276/- awarded to him for having suffered injuries in a motor vehicle accident which occurred on 27.12.2004.
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 left knee, leg, ankle and left foot. On X-ray, he was found to have suffered multiple fractures in the left leg. The Appellant remained under treatment in Jeewan Mala Hospital and Rockland Hospital. He claimed to have spent a sum of ₹3,85,515/- and proved bills Exs.PW-1/1 to PW-1/199 and treatment papers Exs.PW-1/200 to PW-1/241. The Appellant was found to have

suffered post traumatic deformity in left leg with fixed ankle joint resulting into 40% permanent physical impairment in relation to his left lower limb.

4. In the Claim Petition, the Appellant claimed that he was earning ₹5,000/- per month. But during his evidence, he tried to make out a case that he was working in Saudi Arabia and was earning ₹15,000/- per month. In the absence of any evidence with regard to Appellant's income, the Claims Tribunal awarded the loss of income/loss of earning capacity on the basis of the minimum wages of an unskilled worker. The compensation of ₹3,97,276/- awarded for various heads is tabulated hereunder:-

Sl.No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Loss of Income	₹1,92,276/-
2.	On account of Medical Expenses	₹1,40,000/-
3.	On account of Pain and Suffering	₹50,000/-
4.	Special Diet	₹5,000/-
5.	On account of Conveyance Charges	₹10,000/-
	Total	₹ 3,97,476/-

5. The following contentions are raised on behalf of the Appellant:-
- (i) The Claims Tribunal erred in taking the deceased's income as per the Minimum Wages of an unskilled worker. Even if, the Appellant's income was not proved, the Claims Tribunal ought to have been made assessment of the Appellant's income.

- (ii) No compensation was awarded towards loss of amenities, loss of income and Attendant charges.

INCOME

6. I have before me the Claim Petition preferred by the Appellant. In para 6 of the Claim Petition it was stated that the Appellant was a self employed person and was earning ₹5,000/- per month. During evidence, the Appellant tried to state that he was earning 1500/- Riyals per month. No cogent evidence was produced in this regard. No evidence was produced as to the duration of the contract if at all the Appellant was employed in Saudi Arabia. No evidence was produced by the Appellant to prove his profession or the work he was carrying in India or abroad. In the circumstances, the Claims Tribunal was justified in awarding loss of earning capacity on the basis of Minimum Wages of unskilled worker. The disability certificate Ex.PW-1/A shows that the Appellant suffered post traumatic deformity of left leg with fixed ankle joint resulting into 40% permanent physical impairment in relation to his left lower limb.
7. The Appellant has placed on record his latest photograph and is present in the Court. His left leg is totally impaired. He cannot walk, except with the help of a stick. During the course of arguments it was urged by the learned counsel for the Appellant that the Appellant was working as a welder. However, no evidence has been produced by the Appellant in this regard. In any case, the Appellant is taken as a self employed person and on account of disability of 40% in relation to his left lower limb, his earning capacity has been substantially affected. The Appellant would be entitled to addition of 30% in the assumed income on the basis of the judgment of the Supreme Court in *Santosh Devi v. National Insurance*

Company Ltd. & Ors., 2012 (4) SCALE 559. I would take the loss of earning capacity as 40%. The loss of future earning capacity comes to ₹ 2,70,878/- (2874/- + 30% x 12 x 15 x 40%).

8. Keeping in view the fact that the Appellant suffered 40% permanent physical impairment in relation to his left lower limb. He cannot run and he would always have difficulty in walking, squatting and climbing, etc. No compensation has been awarded to him towards loss of amenities and expectations in life. Considering that this accident took place in the year 2004, I would make a provision of ₹50,000/- under this head.
9. The Appellant remained an indoor patient in Jeewan Mala Hospital and Rockland Hospital for a period of about two months. Considering the nature of injuries suffered by him, I am of the view that the Appellant was unable to carry out any work at all for a period of at least one year. He is, therefore, entitled to compensation of ₹34,728/- (2894/- x 12) towards loss of income.
10. 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. The Appellant needed assistance of an Attendant to look after him in the hospitals for two months and for at least two months thereafter. I would award him a sum of ₹10,000/- (2500/- x 4) as Attendant charges for four months.
11. Although the Appellant claimed to have spent a sum of ₹3,85,515/- on his treatment. He was granted compensation on the basis of the bills proved on record by him. This finding of the Claims Tribunal cannot be faulted.

12. The compensation awarded is re-computed as under:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Loss of Future Earning	₹1,92,276/-	₹2,70,878/-
2.	Medical Expenses	₹1,40,000/-	₹1,40,000/-
3.	Pain and Suffering	₹50,000/-	₹50,000/-
4.	Special Diet	₹5,000/-	₹5,000/-
5.	Conveyance Charges	₹10,000/-	₹10,000/-
6.	Loss of Amenities and Expectations in Life	--	₹50,000/-
7.	Loss of Income	--	₹34,728/-
8.	Attendant Charges	--	₹10,000/-
	Total	₹ 3,92,276/-	₹ 5,70,156/-

13. The compensation stands enhanced from ₹3,92,276/- to ₹5,70,156/-.

14. The enhanced compensation of ₹1,77,880/- shall carry interest @ 7.5% per annum from the date of filing of the petition till its deposit.

15. Respondent No.2 National Insurance Company Limited is directed to deposit the enhanced compensation along with interest with the Claims Tribunal within six weeks.

16. Fifty percent of the enhanced compensation shall be held in fixed deposit for a period of two years. Rest shall be released on deposit.

17. The Appeal is allowed in above terms.
18. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 10, 2012

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