

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

Reserved on: 19th July, 2012
Pronounced on: 27th August, 2012

+ **MAC. APP.456/2009**

FAIZAL

..... Appellant

Through:

Mr. Manish Maini, Advocate

Versus

BALWAN SINGH & ANR.

..... Respondents

Through:

Ms. Arti Mahajan, Advocate for the
Respondent No.2 DTC.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appeal is for enhancement of compensation of ₹7,30,460/- awarded by the Motor Accident Claims Tribunal(the Claims Tribunal) in favour of the Appellant for having suffered injuries in a motor vehicle accident which occurred on 05.01.2001.
2. In the absence of any Appeal by the driver, owner and the Delhi Transport Corporation, the finding on negligence has attained finality.
3. The Appellant suffered crush injury on his left foot and ankle and fracture of right femur and tibia. He was hospitalized in All India Institute of Medical Sciences (AIIMS) (from 05.01.2001 to 02.03.2001 and then from 22.03.2002 to 24.04.2002). On 26.01.2001, external fixator was

applied. It was removed on 15.02.2001 and POP Cast was done. Second grafting on the wounds was done during the first stint of hospitalization. At the time of second operation, plates were fixed to give support to the bones. The Appellant remained an outdoor patient for a period of three years. The Appellant was issued a disability certificate Ex.PW3/B by AIIMS declaring him to have suffered 75% permanent physical impairment in relation to his right lower limb, a post traumatic deformity of right lower limb with restricted hip, knee, ankle joint movements and pseudoarthrosis of thigh. The Claims Tribunal awarded a compensation of ₹7,30,000/- which is detailed hereunder in a tabulated form:

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Pain and Suffering	₹50,000/-
2.	Medicines, Medical Treatment	₹ 72,378/-
3.	Conveyance and Special Diet	₹ 25,000/-
4.	Permanent Disability and Loss of Income and on salary of the Attendant	₹ 4,63,080/- ₹20,000/-
5.	Physical Disfigurement	₹50,000/-
6.	Loss of Enjoyment and Amenity of Life	₹50,000/-
	Total	₹ 7,30,458/-

4. It was one of the grounds of the Appeal that the Appellant needed future treatment in respect of the injuries. An Application for additional evidence moved by the Appellant was allowed. He examined himself as AW1 and proved documents Mark AW1/1 to AW1/32 in respect of the treatment and expenditure incurred by him. He also examined AW2 Dr. Anmol Maria, a Consultant Orthopaedic & Joint Replacement Surgeon from Primus Super Specialty Hospital (Primus Hospital) who carried corrective osteotomy of right femur of the Appellant on 26.09.2009. He proved the prescriptions Mark AW1/1 to AW1/4. The bill issued by Primus Hospital is Mark AW1/15. He also proved some receipts in respect of the consultation fee charged by him. Dr. Anmol Maria's (AW2) testimony is extracted hereunder:

"The patient Mr. Faizal came to me for the first time on 22.7.2009. His primary treatment was done in All India Institute of Medical Sciences following a road accident in the year 2001. At AIIMS, the appellant had been treated for multiple fractures of right lower limb. When he came to me he complained of difficulty in walking and shortening of the right leg.

I prescribed x-rays to be done, reports whereof reveal deformity in the right femur (thigh bone) and totally deformed knee-joint. I advised surgery for correction of the deformities as the first stage of treatment. My prescription dated 22.7.2009 (earlier Mark AW1/1) is in my hand it bears my signatures. The same is Ex.AW2/1. On 24.7.2009, after seeing the report of x-rays, I advised the treatment to be done in three stages. My prescription, therefor, is Ex.AW2/2 (earlier Mark AW1/2. The prescription is in my hand, it bears my signatures.

The patient came to me on 23.9.2009 & 24.9.2009, wherein he was advised to be admitted at Primus Hospital on 26.9.2009. The said prescription dated 23.9.2009 (earlier MarkAW1/3) is Ex.AW2/3 and prescription dated 24.9.2009 (earlier Mark AW1/4) is Ex.AW2/4. The patient was admitted to Primus Hospital on 26.9.2009, and corrective Osteotomy of right femur

was done on 26.9.2009 at the patient was discharged on 28.9.2009. Mark Aw1/15 is the bill raised by Primus Super Specialty Hospital in respect of the corrective surgery done by me on the appellant. The appellant also visited me on 5.10.2009, and paid me profession charges ₹1300/-. The receipts dated 5.10.2009 (page-24 annexed with the affidavit of evidence) are Ex.AW2/5 & AW2/6 (earlier Mark AW1/17). The appellant also paid me ₹400/- vide receipt dated 19.10.2009 (earlier Mark AW1/24, which is Ex.AW2/7. On 5.10.2010 I advised the appellant to undergo physiotherapy, my prescription to this effect is Ex.AW2/8 (earlier Mark AW1/8).

For the second stage of treatment I advised the appellant either to undergo knee-joint replacement cost whereof would be approximate ₹1,75,000/- or in the alternative fusion of the knee-joint to be done cost whereof may be slightly less than that. The said surgery could be done two months hence. In the third stage of the treatment, I advised the appellant to undergo lengthening of the limb cost whereof would be ₹1,10,000/-. The cost of the treatment advised on 24.7.2009 was in respect of what was prevalent at that time, the cost may escalate by the passing of time.

xxxxxx by Ms. Arati Mahajan Shedha, counsel for the respondent.

It is correct that there is an economy ward in Primus Super Specialty Hospital. It is also correct that the cost of twin sharing room is more than the economy ward.

In my opinion the three stages of surgery advised by me were essential. Different Orthopaedic Surgeons may have different prescriptions of treatment of the patient. Any other Orthopaedic Surgeon may advise the treatment to be done in a different manner.

Q. Is it true that in between 2001 and 2003, when the surgeries were performed initially and 2009 when the patient came to you some intervening factors/carelessness may have aggravated the condition of the Appellant?

A. The condition of the patient in 2009 was commensurate with the documents shown to me in respect of the

surgeries performed in the years 2001 and/or 2003. There was nothing for me to suspect any injury in the intervening period.”

5. The following contentions are raised on behalf of the Appellant:
- (i) No compensation was awarded towards loss of income for the period the Appellant was away from work; he was incapacitated to carry any work for a period of three years.
 - (ii) The Appellant was awarded compensation on the basis of minimum wages. No addition towards future prospects or inflation was made.
 - (iii) Compensation of ₹20,000/- awarded towards attendant charges was very low.
 - (iv) No compensation was awarded towards future treatment.
 - (v) The compensation awarded towards non-pecuniary damages is low and meagre.
 - (vi) The compensation towards special diet and conveyance is on the lower side.
6. Section 166 of the Motor Vehicles Act, 1988(the Act) enjoins payment of just compensation. 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. In *Arvind Kumar Mishra v. New India Assurance Company Limited*, (2010) 10 SCC 254, the Supreme Court dealt with the case of disability of an engineering student. The Supreme Court observed that while awarding compensation in personal injury cases, an attempt should be made to put the injured in the same position as he was as far as money is concerned. In para 9 of the report, the Supreme Court held as under:

“9. We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was insofar as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered.”

8. In *Nizam’s Institute of Medical Sciences v. Prasanth S. Dhananka & Ors.*, (2009) 6 SCC 1, the Supreme Court emphasized that cases of serious injuries in motor vehicle accident are worse than the death cases because the victim and his family suffers throughout life. Para 90 of the report is extracted hereunder:-

“90. At the same time we often find that a person injured in an accident leaves his family in greater distress vis-à-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous

price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity.”

9. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special Damages)

- (i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.
- (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:
 - (a) Loss of earning during the period of treatment;
 - (b) Loss of future earnings on account of permanent disability.
- (iii) Future medical expenses.

Non-pecuniary damages (General Damages)

- (iv) Damages for pain, suffering and trauma as a consequence of the injuries.
- (v) Loss of amenities (and/or loss of prospects of marriage).
- (vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses,

loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.” (Per *Raj Kumar v. Ajay Kumar & Anr.*, 2011 (1) SCC 343)).

LOSS OF INCOME:

10. In his affidavit produced by way of evidence before the Claims Tribunal, the Appellant testified that he was working as a sales representative of motor parts and was earning ₹4,500/- per month. He also deposed that he was doing graduation from Annamalai University. The Appellant did not produce any evidence as to where he was supplying the motor parts. No proof of income or of his employment or of him being a self-employed person was filed. In the circumstances, the Claims Tribunal awarded the compensation taking minimum wages of a matriculate. As held in *Raj Kumar*, the Appellant was entitled to damages for loss of income during the period he was unable to attend to his work at all. In his affidavit, the Appellant testified that he was totally bed-ridden for a period of three years. No expert evidence was produced nor any doctor was examined to prove that the Appellant needed three years to recover from the injuries. Of course, it has come in evidence that the Appellant needed future treatment. That, by itself, would not show that the Appellant was unable to attend to his work for a period of three years. At the same time, it cannot be lost sight that the Appellant remained hospitalized from 05.01.2001 to 02.03.2001 and then from 22.03.2002 to 24.02.2002. The Appellant would have taken another couple of months to recover from the injuries after his second surgery. Thus, I would assume he was unable to attend to his work for a period of at least 18 months. He is entitled to compensation amounting to ₹54,540/- (₹3030 x 18).

LOSS OF EARNING CAPACITY:

11. As per disability certificate Ex.PW3/B, the Appellant had suffered 75% permanent physical impairment in relation to his right lower limb, a post traumatic deformity of right lower limb with restricted hip, knee, ankle joint movements and pseudoarthrosis of thigh. The disability is quite serious. No expert evidence was produced by the Appellant as to the handicap on account of disability, although, AW2 Dr. Anmol Maria from Primus Hospital was examined by way of additional evidence before the Registrar.
12. 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 found 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."*

13. In the absence of any expert evidence, I would take the loss of earning capacity as 50%. As per his own affidavit, the Appellant was aged 25 years at the time of the accident. He was awarded a compensation of 18 months towards loss of income. Thus, compensation on account of earning capacity has to be granted taking his age as 26 years. The Appellant was entitled to an addition of 30% on account of inflation while computing the loss of future earning capacity as per *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559. Thus,

the loss of earning capacity comes to ₹8,03,556/- (₹3030/- + 30% x 12 x 17) as against a sum of ₹4,63,080/- awarded by the Claims Tribunal.

ATTENDENT CHARGES:

14. No expert evidence was produced to prove the need for attendant after the accident and at the time of surgery post the impugned judgment. Considering the nature of injuries suffered by the Appellant, it can be assumed that the Appellant was unable to carry out his day to day activities of going to the toilet, having a bath and doing other essential things of his own at the most for a period of eight months including one month after the award. The minimum wages of an unskilled worker at the time of the accident were ₹2579/-. The Appellant proved the receipt Mark AW1/29 to AW1/32 to show that one Mohd. Ahmed was employed for a period of four months as an attendant at a salary of ₹3200/- per month. Said Mohd. Ahmed was not produced. I am, therefore, not inclined to believe that Mohd. Ahmed was employed by the Appellant. In any case, even if gratuitous services were rendered by a family member, the Appellant cannot be denied compensation for the same.
15. In *Delhi Transport Corporation and Anr. v. Lalita*, AIR 1981 Delhi 558, a Division Bench of this Court held that there cannot be deduction if domestic help is obtained from a family member. The relevant para of the report is extracted hereunder:-

“.....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). ”

Thus, the compensation of ₹20,000/- awarded under this head is just and reasonable.

FUTURE TREATMENT:

16. The Appellant examined AW2 Dr. Anmol Maria from Primus Hospital to prove the corrective surgery underwent by the Appellant in Primus Hospital. He proved the documents Mark AW1/1 to AW1/28 in respect of the expenditure incurred by him including the bill Mark AW1/15 for ₹82,705/-. This totals to ₹1,27,077/-. From the record, it appears that the Appellant had taken a twin sharing room. AW2 Dr. Anmol Maria admitted that the cost of an economy ward in Primus Hospital is much cheaper than a twin sharing room. But, a twin sharing room cannot be said to be a luxury accommodation. Moreover, no evidence in rebuttal was brought by the Respondent DTC that an economy ward was available in the Hospital. The Respondent DTC has not been able to produce any evidence to doubt the expenditure on the treatment taken in Primus Hospital. Accordingly, I grant a sum of ₹1,28,000/- towards the treatment received during the pendency of the Appeal.
17. AW2 Dr. Anmol Maria also gave estimate for second and third stage of the corrective surgery which would involve an expenditure of ₹ 2,75,000/-. In view of the expert evidence of Dr. Anmol Maria, I see no reason to disbelieve the same and hold that the Appellant is entitled to a sum of ₹ 2,75,000/- towards future treatment.

18. In the case of *Govind Yadav v. New India Insurance Co. Ltd.*, (2011) 10 SCC 683, the Supreme Court relied on *R.D. Hattangadi v. Pest Control (India) (P) Ltd.*, 1995 (1) SCC 551, *Nizam's Institute of Medical Sciences, Arvind Kumar Mishra and Raj Kumar* and granted a compensation of ₹3,00,000/- under non-pecuniary heads in case of amputation of a leg of a young boy aged 24 years. It is difficult to measure in terms of money the pain and suffering which is 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.
19. The Appellant underwent successful surgeries in the year 2001, 2003 and 2009. He would need another surgery as stated hereinabove. In the circumstances, award of ₹50,000/- towards pain and suffering was on the lower side. The same is enhanced to ₹1,50,000/- in consonance with *Govind Yadav*. As far as award of compensation of ₹50,000/- each towards physical disfigurement and loss of amenities of life (totaling to ₹1,00,000/-) is concerned, the Appellant's disability is lower than the one suffered by the victim in *Govind Yadav*. The same is accordingly not interfered with.
20. The award of compensation of ₹25,000/- towards conveyance and special diet also seems to be just and reasonable in the absence of any specific evidence with regard to the actual expenditure under this head.

21. The overall compensation is recomputed as under:

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Pain and Suffering	₹50,000/-	₹1,50,000/-
2.	Medicines, Medical Treatment	₹ 72,378/-	₹72,378/-
3.	Conveyance and Special Diet	₹ 25,000/-	₹25,000/-
4.	Permanent Disability and Loss of Income and on salary of the Attendant	₹ 4,63,080/- ₹20,000/-	₹8,03,556/- ₹54,540/- ₹20,000/-
5.	Physical Disfigurement	₹50,000/-	₹50,000/-
6.	Loss of Enjoyment and Amenity of Life	₹50,000/-	₹50,000/-
7.	Future Treatment i. (During the Year 2009) ii. 2 nd & 3 rd stage surgery	-	₹1,28,000/- ₹2,75,000/-
	Total	₹ 7,30,458/-	₹16,28,474/-

22. Thus, there is an overall enhancement of ₹8,98,016/- in the compensation awarded. The enhanced compensation of ₹4,95,016/- shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment. An enhancement of ₹4,03,000/- has been awarded in respect of the treatment received by him in the year 2009 and the treatment which is yet

to be received. The Appellant would be entitled to interest @ 7.5% per annum on this sum from 01.08.2009 till its payment. The compensation of ₹2,75,000/- shall be held in fixed deposit in UCO Bank, Delhi High Court Branch for a period of one year and shall be released to the Appellant at the time of the second and third stage of surgery. Rest of the enhanced compensation shall be released on deposit. The enhanced compensation along with interest shall be deposited by the Respondent No.2 Delhi Transport Corporation with the UCO Bank, Delhi High Court Branch within six weeks.

23. The Appeal is allowed in above terms.
24. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

AUGUST 27, 2012
pst