

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

Date of decision: 7th August, 2012

+ **MAC.APP. 335/2009**

GULAM NABI BHAT Appellant

Through: Mr. O.P. Mannie, Adv. with
Mr. Manish Maini, Adv.

versus

MD. ARMAN ALI & ORS Respondents

Through: Mr. Pankaj Seth, 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 ₹ 8,89,734/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the Appellant for having suffered grievous injuries in a motor vehicle accident which occurred on 16.10.2006.
2. In the absence of any Appeal by the driver, owner and the Insurer, the finding on negligence has attained finality.
3. During inquiry before the Claims Tribunal it was averred that the Appellant was a fruit merchant who would bring fruits from Jammu and Kashmir and sell it in Subzi Mandi, Azadpur. It was alleged that he was earning ₹7,000/- per month and that on account of the accident, the Appellant has become paraplegic and totally disabled to carry out any work. He cannot even stand of his own and do even the normal day to day chores. The Claims Tribunal accepted that the Appellant is totally disabled. The Claims Tribunal declined to accept the Appellant's income

to be ₹7,000/- per month. It, therefore, granted compensation on the basis of minimum wages of non-Matriculate as per his qualification, added 50% towards future prospects, applied the multiplier of '18' and granted compensation assuming his disability to be 75% and one-third thereof was deducted towards misc. expenses.

4. The Claims Tribunal accepted that the deceased would need an Attendant to look after him on day to day basis and awarded a lump sum compensation of ₹1,50,000/- under this head. The compensation awarded is tabulated hereunder:-

Sl.No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Pain and Injury	₹50,000/-
2.	Medical Expenses	₹ 1,05,176/-
3.	Conveyance Charges	₹ 10,802/-
4.	Hotel Charges	₹ 6,000/-
5.	Loss of Earning Capacity	₹ 5,67,756/-
6.	Attendant Charges	₹ 1,50,000/-
	Total	₹ 8,89,734/-

5. The following contentions are raised on behalf of the Appellant:-

- (i) The Claims Tribunal erred in not accepting the deceased's income as ₹7,000/- per month. In case of personal injury, the injured is alive and therefore, no deduction can be made towards personal and living expenses.

- (ii) The compensation awarded towards Attendant charges was very low and meager.
 - (iii) No compensation was awarded towards loss of amenities.
6. On the other hand, it is urged by the learned counsel for the Insurance Company that the Appellant was in wholesale fruit business. He could have engaged some workers to carry on business from his home. It is contended that the Appellant's income of non-Matriculate was rightly accepted by the Claims Tribunal in the absence of any cogent evidence with regard to his income. It is urged that the compensation awarded is just and reasonable.
7. 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.”*
8. 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.”

9. 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.”

10. 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 permanent 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.”

11. I have before me the Trial Court record containing Ex.PW-3/A, the medical record with regard to the Appellant's treatment in Hindu Rao Hospital (running into 105 sheets). The Appellant suffered (i) transverse fracture of L2 with complete separation into superior and inferior segments and marked disarray of spinal canal & its contents at this level and (ii) disc degeneration with disc herniation at L4-5 and L5-S1 level.
12. The Appellant remained admitted in Hindu Rao Hospital from 16.10.2006 to 23.10.2006. He was then admitted in City Hospital, affiliated with Sir Ganga Ram Hospital, where he remained admitted from 23.10.2006 to 02.11.2006. The Appellant underwent surgery in the City Hospital. The documents Ex.PW-4/A (running into 57 sheets) have been proved by the official of the City Hospital. The Appellant further proved the treatment papers from the office of Chief Medical Officer, Pulwama, Indian Spinal Injuries Centre, Vasant Kunj and the outdoor treatment received by him in Sir Ganga Ram Hospital. The OPD card prepared by Govt. Hospital for Bone & Joint Surgery, Srinagar (Ex.PW-5/7) reveals that the Appellant was suffering from bedsore because of him being paraplegic. He was referred to the Govt. Ref. Clinic where he remained as outdoor patient.
13. The Appellant was issued a Disability Certificate Ex.PW-7/A declaring him 100% permanently disabled in relation to both lower limbs.
14. It is established on record that the Appellant would not be able to carry out any work at all. The Appellant was in small business who claimed his

income to be ₹7,000/- per month. The minimum wages of a Matriculate now are even more than ₹7,000/- per month. It would be difficult to say that the Appellant would still carry out his business by engaging full time person, that perhaps may not be a viable situation for the Appellant. Moreover, a paraplegic person whose both lower limbs cannot work at all, can hardly give effective instructions to carry out the business as a wholesale fruit merchant. Thus, it is established that the Appellant was totally disabled and he should have been awarded compensation on 100% loss of earning capacity.

15. Deduction towards personal and living expenses is made only in fatal accident cases as the deceased would spend some amount on his own living. No such deduction can be made in injury cases.
16. In *Raj Kumar* it was laid down that no deduction would be made towards the personal and living expenses while awarding loss of future earning capacity in injury cases. Para 27 of the report in *Raj Kumar* is extracted hereunder:-

“27. In the case of an injured claimant with a disability, what is calculated is the future loss of earning of the claimant, payable to the claimant, (as contrasted from loss of dependency calculated in a fatal accident, where the dependent family members of the deceased are the claimants). Therefore, there is no need to deduct one-third or any other percentage from out of the income, towards the personal and living expenses.”

17. Before the Claims Tribunal, the Appellant claimed his income to be ₹7,000/- per month while working as a fruit merchant. His testimony that he used to bring fruits from Jammu & Kashmir to Delhi was not seriously challenged in cross-examination. He was simply given a suggestion that he was not earning ₹7,000/- per month. The Appellant produced a

Certificate from Tehsildar, Pulwama Ex.PW-5/69 who verified and stated that the Appellant's income was ₹7,000/- per month.

18. On the basis of the Appellant's oral testimony coupled with the certificate, I see no reason to disbelieve that the Appellant was earning ₹7,000/- per month.
19. This Court in *Rakhi v. Satish Kumar & Ors.* (MAC. APP. 390/2011) decided on 16.07.2012, referred to the reports of the Supreme Court in *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.* (1994) 2 SCC 176, *Sarla Dixit v. Balwant Yadav*, (1996) 3 SCC 179, *Bijoy Kumar Dugar v. Bidya Dhar Dutta & Ors.* (2006) 3 SCC 242, *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.* (2009) 6 SCC 121 and *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559 and held that as per *Santosh Devi* even in the absence of any evidence as to future prospects an increase of 30% in the income has to be provided where the victim had fixed income or was a self employed person. Relevant portion of *Santosh Devi* is extracted hereunder:

“14.....In our view, it will be naive to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self- employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those

employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."

20. Thus, the Appellant would be entitled to an addition of 30% in his income on account of inflation to compute the loss of future earning capacity. The loss of future earning capacity would come to ₹18,56,400/- (7,000/- + 30% x 12 x 17).
21. The Appellant examined PW-6 Mustaq Ahmed Meer who deposed that he was working as an Attendant with the Appellant and was being paid ₹3,000/- per month. He deposed that earlier he was earning ₹2,000/- to ₹2,500/- per month from agriculture. In the facts and circumstances, I would award a compensation towards Attendant charges @ ₹2,000/- per month which would come to ₹4,08,000/-(2000/- x 12 x 17) as against a sum of ₹1,50,000/- awarded by the Claims Tribunal.
22. The Appellant is still under treatment as is evident from the OPD card issued by Govt. Hospital for Bone & Joint Surgery Ex.PW-5/7 and from Reff. Clinic Ex.PW-5/8. Even if, the treatment and consultation is free, the Appellant would require some medicines from time to time. The Claims Tribunal did not make any provision for future medical attendance. In case of a paraplegic person with 100% disability, I would award compensation of ₹50,000/- towards future medical expenses.
23. The compensation of ₹50,000/- awarded towards pain and suffering is enhanced to ₹75,000/-.
24. In *Raj Kumar* it was laid down that in the event of award of compensation of 50% or more towards loss of earning capacity, the award of compensation towards loss of amenities would be duplication and only a nominal compensation should be awarded under this head. Para 15 of the report in *Raj Kumar* is extracted hereunder:-

“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.....”

25. In the facts and circumstances, I would award a sum of ₹25,000/- towards loss of marriage prospects and loss of amenities in life.

26. The compensation awarded is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Pain and Injury	₹50,000/-	₹75,000/-
2.	Medical Bills	₹ 1,05,176/-	₹ 1,05,176/-
3.	Conveyance Charges	₹ 10,802/-	₹ 10,802/-
4.	Hotel Charges	₹ 6,000/-	₹ 6,000/-
5.	Loss of Earning Capacity	₹ 5,67,756/-	₹18,56,400/-
6.	Attendant Charges	₹ 1,50,000/-	₹4,08,000/-
7.	Future Medical Expenses	--	₹50,000/-
8.	Loss of Marriage Prospects and Loss of Amenities in Life.	--	₹25,000/-
	Total	₹ 8,89,734/-	₹ 25,36,378/-

27. The compensation is enhanced from ₹8,89,734/- to ₹25,36,378/- which shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.

28. The enhanced compensation of ₹16,46,644/- along with interest shall be deposited in the name of the Appellant in UCO Bank, Delhi High Court Branch, New Delhi within six weeks.
29. The compensation awarded by the Claims Tribunal shall be disbursed in the manner as directed by the Claims Tribunal. The enhanced compensation of ₹16,46,644/- along with interest shall be disbursed as under:-
- (i) 10% to be held in fixed deposit for a period of two years.
 - (ii) 10% to be held in fixed deposit for a period of four years.
 - (iii) 10% to be held in fixed deposit for a period of six years.
 - (iv) 10% to be held in fixed deposit for a period of eight years.
 - (v) 10% to be held in fixed deposit for a period of ten years.
 - (vi) 10% to be held in fixed deposit for a period of twelve years.
 - (vii) 10% to be held in fixed deposit for a period of fourteen years.
 - (viii) 10% to be held in fixed deposit for a period of sixteen years.
 - (ix) Rest 20% to be released on deposit.
30. The compensation on maturity shall be transferred to his saving account by UCO Bank, Delhi High Court Branch, New Delhi as the Appellant may request to the Assistant General Manager of the UCO Bank.
31. The Appeal is allowed in above terms.

32. Pending Applications also stand disposed of.

G.P. MITTAL)
JUDGE

AUGUST 07, 2012

vk