

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

Reserved on: 19th April, 2012

Pronounced on: 11th May, 2012

+ **MAC APP. 730/2011**

MANOHAR LAL SURI Appellant
Through: Mr. Rajnish K. Jha, Advocate

versus

S. MOHINDER SINGH & ORS. Respondents
Through: Mr. Kanwal Chaudhary, Adv.
for R-2.

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 ₹5,25,288/- awarded to the Appellant for having suffered injuries in a motor accident which occurred on 29.01.2008.
2. I am not to go into the question of negligence as there is no challenge to the finding either by the owner, driver or the Insurer of the Tata truck No.JK-02-AC-9465 involved in the accident.
3. On 29.01.2008 at about 9:30 P.M. the Appellant was returning home on his bicycle. He was hit by the earlier said Tata truck from behind. The Appellant suffered head injury, crush injury

on right arm, with compound fracture of shaft and neck on the right humerus apart from various other injuries on his body. He also lost two teeth.

4. The Appellant was removed to Babu Jagjivan Ram Memorial Hospital, Jahangirpuri by the police and was then shifted to Max Hospital, Pitampura for better treatment. The Appellant remained there from 30.01.2008 to 05.02.2008. To save the Appellant's life, his right arm above elbow had to be amputated. The Disability Certificate shows that he suffered permanent disability to the extent of 80% in relation to his right upper limb.
5. The Claims Tribunal awarded a compensation of ₹5,25,288/-, which is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Compensation for Pain & Suffering	₹60,000/-
2.	Compensation for Expenses Incurred on Medical Treatment	₹ 1,45,288/-
3.	Compensation for Special Diet	₹ 4,000/-
4.	Compensation for Conveyance Charges	₹ 4,000/-
5.	Compensation for Attendant Charges	₹ 12,000/-
6.	Compensation for Loss of Enjoyment of Amenities of Life & General Damages	₹ 1,50,000/-

7.	Compensation on account of Inconvenience Hardship, Discomfort, Disappointment, Frustration and Mental Stress in Life	₹ 1,50,000/-
	Total	₹ 5,25,288/-

6. In *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors*, (1994) 2 SCC 176, the Supreme Court observed *that 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. At the same time, a misplaced sympathy, generosity and benevolence cannot be the guiding factor for determining the compensation. The object of providing compensation is to place the claimant(s), to the extent possible, in almost the same financial position, as they were in before the accident and not to make a fortune out of misfortune that has befallen them.*
7. The following contentions are raised on behalf of the Appellant:-
- (i) The Appellant was not awarded any compensation for loss of income as he could not attend to his work for a period of six months.

- (ii) The Appellant was not awarded any compensation towards loss of earning capacity on the ground that the injury would not impact his earning capacity.
- (iii) The compensation awarded towards special diet and conveyance was insufficient.

8. On the question of loss of income on account of accident and loss of future earning capacity, the Claims Tribunal held as under:-

“(iii) Compensation on account of loss of income

Petitioner has stated in his affidavit that he is retired teacher but used to give tuition at his house and used to earn more than Rs. 10,000/- per month. During cross examination, he has admitted that he has not filed any proof/documents regarding his income from tuition. He has also not examined any students to whom he used to give tuition. Therefore, I am of the view that he has failed to prove the fact that he used to give tuition to the students and was having earnings from tuition. Therefore, I am of the view that there is no loss of income due to accidental injuries sustained by him during treatment. Therefore, nothing is granted to him under this head.

(iv) Compensation on account of future loss of earning capacity due to disability:

Petitioner has failed to prove the fact that he was having any earnings from tuition at the time of accident but, in future, he may have earnings. As per disability certificate, he has suffered amputation on right upper limb. In the present case, petitioner was Hindi teacher. For giving tuition of Hindi language, there is no requirement of writing while giving tuition and petitioner may teach Hindi language without need of any writing.

Therefore, I am of the view that there would be no loss of earning capacity due to disability and , therefore, no compensation is granted under this head.”

9. The Appellant filed his Affidavit Ex.PW-1/1 by way of his evidence. He testified that he was a retired teacher and used to give tuitions to the students at his house and would earn more than ₹10,000/- per month. He deposed that he was unable to continue his work because he could not write anything. He proved the copies of his academic qualification and his previous employment in a Govt. school as Ex.PW-1/D collectively. The Appellant passed his matriculation examination from Punjab University in First Division and his Graduation from Meerut University again in First Division. He did his Post Graduation in Hindi from Meerut University. He superannuated as a Teacher from a Govt. school in the year 1999. His pension after commutation was ₹3225/- as on 19.08.1999. In cross-examination, the witness deposed that he was a Hindi Teacher in Govt. Senior Secondary School at Rani Bagh. He changed his version and gave his earning in the cross-examination to be ₹7,000/- to 8,000/- (as against ₹10,000/- stated in the Affidavit). Although the income from tuition was challenged in cross-examination but the fact that he was teaching students at home was not challenged in cross-examination. Thus, it was established that the Appellant was engaged in teaching students at home at the time of the accident which occurred on 29.01.2008.

10. As stated earlier, the Appellant suffered amputation of his right arm above elbow. The Claims Tribunal's finding that while teaching Hindi language writing is not required, is totally unfounded. Writing is an integral part of teaching any language including Hindi.
11. The Appellant's case is that he was unable to do any teaching work at all after the accident. Considering that the amputation of his right arm was done in Max Hospital on 30.01.2008 and he was discharged from the hospital on 05.02.2008. I would assume that the Appellant must have taken at least three months to recover from the injuries to resume his work.
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 affecting the loss of earning capacity. I have already held above that writing is an integral part of teaching any language and would assume the loss of his earning capacity to be about 50% even if the Appellant started writing something with his left hand. In the absence of any evidence as to the income from tuition work and the fact that the Appellant was a retired teacher, aged 68 years on the date of the accident, I would award him a compensation assuming his income to be that of a graduate under the Minimum Wages Act.
13. The Minimum Wages of a Graduate in January, 2008 were ₹4276/-. The Appellant is awarded a compensation of ₹12,828/-

(₹4276/- x 3) towards loss of income for three months and ₹1,28,280/- (4276/- x 50% x 12 x 5) towards loss of earning capacity.

14. It is urged that the compensation awarded towards special diet and conveyance was very meager. The Appellant did not lead any evidence as to how many times he had to visit the doctor and how much amount was spent on special diet. Considering the nature of injuries, the compensation of ₹4,000/- each awarded towards special diet and conveyance is just and reasonable.
15. In view of above discussion, the compensation awarded is enhanced by ₹1,41,108/- which shall carry interest @ 7.5% per annum as granted by the Claims Tribunal.
16. Respondent No.2 the New India Assurance Company Limited is directed to deposit the enhanced compensation along with interest in UCO Bank, Delhi High Court, New Delhi within six weeks in the name of the Appellant.
17. Since the Appellant is now aged more than 72 years, the enhanced compensation along with interest shall be released to him immediately on deposit.
18. The Appeal is allowed in above terms.

(G.P. MITTAL)
JUDGE

MAY 11, 2012/vk