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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 17th July, 2012

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MAC APP. No.876/2011

LAKHMI CHAND

..... Appellant

Through: Mr. Vikas Sharma, Advocate

Versus

LAXMI CHAND & ORS.

..... Respondents

Through: Jyotinder Kumar. Advocate for
the Respondents No.1 & 2.

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 ₹2,80,000/- awarded in favour of the Appellant Lakhmi Chand for having suffered injuries in a motor vehicle accident which occurred on 17.10.2008.
2. The finding on negligence reached by the Motor Accident Claims Tribunal (the Claims Tribunal) has not been challenged by any of the Respondents and has thus attained finality.
3. On account of the accident, the Appellant suffered fracture of 3rd, 4th 5th Metatarsal and lacerated wound of 8x5cm on the left

foot. Initially the Appellant received treatment in Guru Tegh Bahadur Hospital and was then under treatment of Dr. Dipti Gupta. He was issued a disability certificate showing disability of 45% in respect of his left lower limb. The Claims Tribunal awarded a compensation of ₹2,80,000/-, which is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Expenses relating to Treatment, Hospitalization, Medicines, Transportation, Nourishing Food, and Miscellaneous Expenditure	₹1,64,000/-
2.	Future Medical Expenses	Nil
3.	Loss of Wages(11,000 x 6)	₹ 66,000/-
4.	Funeral Expenses	₹ 5,000/-
5.	Non-pecuniary Damages: Damages for Pain, Suffering and Trauma as a consequence of the injuries	₹ 50,000/-
	Total	₹ 2,80,000/-

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

- (i) Although the Appellant suffered permanent disability, but no compensation was awarded towards loss of earning capacity;

- (ii) The Appellant proved that because of the permanent disability, the Appellant would have difficulty in walking, running, etc. etc., but no compensation was awarded towards loss of amenities in life;
 - (iii) The Appellant suffered serious fractures and remained under treatment for a period of six months, but no compensation was awarded towards special diet and conveyance.
5. In *Raj Kumar v. Ajay Kumar & Anr.*, 2011 (1) SCC 343, the Supreme Court brought the distinction 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 with 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.

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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 find 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."

6. In the instant case, the Appellant was employed as a Conductor in DTC. Even after the accident, his employment and future

prospects were not affected on account of the permanent disablement as he continued in the same job. Thus, the Appellant was not entitled to any compensation towards loss of future earning capacity.

7. As per the disability certificate Ex.PW1/F, the Appellant suffered 45% permanent disability on account of locomotion impairment in relation to left lower limb. PW2 Dr. Lalit Kumar from Department of Orthopedics, GTB Hospital proved the disability certificate and testified that the disability will affect the Appellant's working as a Conductor when he would move in the bus but not when he would sit. It is, therefore, apparent that the Appellant would have difficulty in walking, running squatting, etc. etc. Considering the nature of injuries and the fact that the accident took place in the year 2008, I award a compensation of ₹50,000/- towards loss of amenities.
8. The Appellant remained admitted in Safdarjang Hospital from 17.10.2008 to 21.10.2008. He was then an outdoor patient till May, 2009. The Appellant deposed that he spent ₹20,000/- on special diet and ₹15,000/- on conveyance charges. The details of this expenditure, however, were not given yet the Court can take judicial notice that for such a long duration of treatment he must have spent some amount on special diet and conveyance. In the circumstances of the case, I award him a sum of ₹10,000/- each towards special diet and conveyance charges.

9. The overall compensation is thus enhanced by ₹70,000/- which shall carry interest @ 7.5% per annum from the date of the filing of the Petition till its payment. The enhanced amount shall be deposited by the Respondent No.3 United India Insurance Co. Ltd. with the Claims Tribunal within six weeks shall be released to the Appellant immediately on deposit.
10. The Appeal is allowed in above terms.
11. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

JULY 17, 2012
pst