

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

Date of decision: 9th October, 2012

+ **MAC. APP. 967/2011**

UNITED INDIA INSURANCE COMPANY LTD..... Appellant
Through: Mr. Ravinder Nath Zadoo, Adv.

versus

BABITA & ORS. Respondents
Through Mr. Anshuman Bal, Adv. for R-1.

+ **MAC. APP. 764/2012**

BABITA Appellant
Through: Mr. Anshuman Bal, Adv

versus

UNITED INDIA INSURANCE COMPANY LTD & ORS.
..... Respondents
Through: Mr. Ravinder Nath Zadoo, Adv. for R-1.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These two Appeals arise out of a common judgment dated 05.07.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) in MACT Suit No.408/2008 whereby a compensation of ₹3,59,200/- was awarded in favour of Babita (the Claimant) for having suffered injuries in a motor vehicle accident which occurred on 18.03.2008.
2. The finding on negligence has not been challenged by the Appellant (the Insurance Company). Thus, the same has attained finality.

3. Immediately after the accident, the Claimant Babita was removed to GTB hospital. For lack of appropriate treatment, she was shifted to Safdarjung Hospital on 18.03.2008 itself, where she remained admitted for 19 days. The Claimant suffered crush injury on right foot. On the date of the admission in the Safdarjung Hospital, amputation of the big toe of right foot was carried out. Debridement was done on 07.04.2008. On 07.07.2008, the Claimant was referred to rehabilitation department of the hospital for physiotherapy. She could not recover from the injuries fully and suffered 39% locomotor impairment in relation to her right lower limb.
4. During inquiry before the Claims Tribunal it was claimed that the Claimant was in private service and was earning ₹4,000/- per month. The Claimant as PW-1 also testified to the same. She also deposed that on account of the injuries suffered in the accident she was unable to carry out the household work for a period of about one year and was unable to pursue her employment. She deposed that she would find it difficult to carry out the household work because of the permanent disability.
5. The Claims Tribunal, in the absence of any evidence with regard to the Claimant's employment disbelieved that she was engaged in any private service. She was taken to be a housewife and was awarded compensation taking the value of gratuitous services rendered by a housewife to be ₹3,000/- per month. The Claims Tribunal came to the conclusion that on account of 39% locomotor impairment in relation to the right lower limb, there would be loss in rendering gratuitous services to the extent of 20%. The Claims Tribunal, thus awarded a sum of ₹1,22,400/- towards the loss of future earning/gratuitous services;

₹13,500/- towards loss of earning for 4½ months; ₹5759/- towards purchase of medicines and treatment; ₹7,500/- towards conveyance and ₹10,000/- towards special diet. A further sum of ₹1,50,000/- was awarded towards pain and suffering and ₹50,000/- towards loss of expectations of life.

6. It is urged by the learned counsel for the Appellant Insurance Company that the compensation awarded is exorbitant and excessive. It was nowhere the case of the Claimant that she was a housewife and thus, she could not have been awarded compensation for loss of gratuitous services rendered by a housewife. Moreover, deduction of one-third towards personal and living expenses ought to have been made by the Claims Tribunal.;
7. It is submitted that the compensation of ₹1,50,000/- awarded towards pain and suffering and ₹50,000/- towards loss of expectations of life is exorbitant and excessive.
8. On the other hand, learned counsel for the Claimant argues that the Claimant's testimony that she was unable to carry out household work was not challenged in cross-examination. The Claims Tribunal rightly granted compensation for loss of gratuitous services rendered by a housewife, but at the same time, the Claims Tribunal erred in awarding the compensation on assuming the value of gratuitous services as ₹3,000/- per month which ought to have been awarded on the basis of minimum wages of non-Matriculate with addition of 25% in view of the judgment of this Court in *Royal Sundaram Alliance Insurance Co. Ltd. v. Master Manmeet Singh & Ors.*; 2012 ACJ 721. It is stated that no compensation has been awarded towards attendant charges.

9. It is further argued on behalf of the Claimant that there should not be any deduction towards personal and living expenses as has been held by the Supreme Court in *Raj Kumar v. Ajay Kumar & Anr.*, 2011 (1) SCC 343, that in case of injured/Claimant with a disability what is calculated is the future loss of earning of the Claimant payable to him/her and therefore, there is no need to deduct one-third or any other percentage from out of the income towards personal and living expenses.
10. The Claimant produced her evidence by way of Affidavit Ex.PW-1/A. She testified that she was in private service and could not attend to the same for one year on account of the injuries suffered in the accident. She stated that she was unable to carry out the household work after the accident and had to engage a servant and was paying him ₹2,000/- per month. As stated earlier, the Claims Tribunal declined to believe the Claimant's testimony that she was in private service and was earning ₹4,000/- per month. A perusal of the Claimant's evidence would reveal that she did not give any detail of employment, the nature of job carried out by her and thus, the Claims Tribunal's finding that the Claimant failed to prove that she was in private service cannot be faulted. The Claimant also testified that she was unable to carry out the household work because of the injuries sustained in the accident. Although, the Claims Tribunal disbelieved the Claimant's version that she had to engage a servant to carry out the household work, yet the Claimant's testimony that she was doing household work was not challenged in cross-examination.
11. Thus, the Claimant was to be awarded compensation for loss of income for the period in which she could not attend to the work and also towards

the loss of earning on account of the loss of gratuitous services rendered by a house wife on the principles as laid down in *Master Manmeet Singh*.

12. In *Master Manmeet Singh* this Court noticed following judgments of the Supreme Court:-

- (i) *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.* (1994) 2 SCC 176,
- (ii) *National Insurance Company Limited v. Deepika & Ors.*, 2010 (4) ACJ 2221,
- (iii) *Amar Singh Thukral v. Sandeep Chhatwal*, ILR (2004) 2 Del 1,
- (iv) *Lata Wadhwa & Ors. v. State of Bihar & Ors.*, (2001) 8 SCC 197,
- (v) *Gobald Motor Service Ltd. & Anr. v. R.M.K. Veluswami & Ors.*, AIR 1962 SC 1,
- (vi) *A. Rajam v. M. Manikya Reddy & Anr.*, MANU/AP/0303/1988,
- (vii) *Morris v. Rigby* (1966) 110 Sol Jo 834 and
- (viii) *Regan v. Williamson* 1977 ACJ 331 (QBD England),

and laid down the principle for determination of loss of dependency on account of gratuitous services rendered by a housewife. Para 34 of the judgment in *Master Manmeet Singh* (*supra*) is extracted hereunder:-

“34. To sum up, the loss of dependency on account of gratuitous services rendered by a housewife shall be:-

- (i) *Minimum salary of a Graduate where she is a Graduate.*

- (ii) *Minimum salary of a Matriculate where she is a Matriculate.*
- (iii) *Minimum salary of a non-Matriculate in other cases.*
- (iv) *There will be an addition of 25% in the assumed income in (i), (ii) and (iii) where the age of the homemaker is upto 40 years; the increase will be restricted to 15% where her age is above 40 years but less than 50 years; there will not be any addition in the assumed salary where the age is more than 50 years.*
- (v) *When the deceased home maker is above 55 years but less than 60 years; there will be deduction of 25%; and when the deceased home maker is above 60 years there will be deduction of 50% in the assumed income as the services rendered decrease substantially. Normally, the value of gratuitous services rendered will be NIL (unless there is evidence to the contrary) when the home maker is above 65 years.*
- (vi) *If a housewife dies issueless, the contribution towards the gratuitous services is much less, as there are greater chances of the husband's re-marriage. In such cases, the loss of dependency shall be 50% of the income as per the qualification stated in (i), (ii) and (iii) above and addition and deduction thereon as per (iv) and (v) above.*
- (vii) *There shall not be any deduction towards the personal and living expenses.*
- (viii) *As an attempt has been made to compensate the loss of dependency, only a notional sum which may be upto ₹ 25,000/- (on present scale of the money value) towards loss of love and affection and ₹ 10,000/- towards loss of consortium, if the husband is alive, may be awarded.*
- (ix) *Since a homemaker is not working and thus not earning, no amount should be awarded towards loss of estate."*

13. An Appeal being SLP (C) No.19711/2012 filed against the above referred judgment as *ICICI Lombard General Insurance Company Limited v. Shiv*

Kumar & Ors., was dismissed by the Supreme Court by an order dated 24.07.2012.

14. The Claimant suffered 39% locomotor impairment in relation to her right lower limb. PW-2 Dr. Lalit Kumar was examined to prove the disability. He was unable to say as to what would be the percentage of the disability in respect of the whole body. He stated that the certificate has been prepared as per guidelines issued by Ministry of Social Justice and Empowerment. Thus, no expert evidence was produced by the Claimant to show as to how the permanent disability would affect the Claimant vis-à-vis her work as a housewife.
15. 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.

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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 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."

16. In the absence of any evidence as to the exact effect on the loss of earning capacity or working, the Claims Tribunal took 39% locomotor impairment in relation to the right lower limb to be 20% for loss of earning capacity. In the circumstances, and in the absence of any other material, I am not inclined to interfere with the guess work made by the Claims Tribunal. The loss of earning capacity on the principles of *Master Manmeet Singh* thus comes to ₹1,95,126/- (3826/- + 25% x 12 x 17 x 20%).

17. The Claims Tribunal awarded a sum of ₹13,500/- as loss of income for 4½ months. I have taken the monthly value of gratuitous services to be ₹3826 + 25% = ₹4782/- per month. I would therefore award a sum of ₹21,519/- for 4½ months as against a sum of ₹13,500/- awarded by the Claims Tribunal.
18. Keeping in view the nature of injuries suffered by the Claimant and the fact that she remained hospitalized for 19 days and she needed an Attendant to look after her, the claimant was entitled to attendant charges. 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 of the family members, for the benefit of the tortfeasor. In the circumstances, I would award a sum of ₹12,000/- @ ₹3,000/- per month for a period of four months as compensation towards Attendant charges.
19. The Claims Tribunal awarded a sum of ₹1,50,000/- towards pain and suffering. In case of *Govind Yadav v. New India Insurance Co. Ltd. (2011) 10 SCC 683*, relied on by the Claims Tribunal in case of amputation of one leg a compensation of ₹1.5 lacs each was awarded towards pain and suffering and loss of amenities in life including the loss of marriage prospects. Thus, in the instant case, the award of ₹1,50,000/- towards pain and suffering is on the higher side; the same is reduced to ₹75,000/-.
20. The compensation of ₹50,000/- awarded towards loss of expectations of life is treated as compensation towards disfigurement, loss of amenities in life and loss of expectations of life and is just and reasonable. The same is accordingly maintained.

21. The Claimant remained as indoor patient for a period of about 19 days and was a outdoor patient for a period of over four months. The compensation of ₹7,500/- awarded towards conveyance charges and ₹10,000/- awarded towards special diet is just and reasonable.
22. 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	₹1,22,400/-	₹1,95,126/-
2.	Loss of Earning for 4½ months	₹ 13,500/-	₹ 21,519/-
3.	Conveyance Charges	₹ 7,500/-	₹ 7,500/-
4.	Special Diet	₹ 10,000/-	₹ 10,000/-
5.	Pain and Suffering	₹ 1,50,000/-	₹ 75,000/-
6.	Loss of Expectation of Life/ Disfigurement/Loss of Amenities	₹ 50,000/-	₹ 50,000/-
7.	Medicines	₹ 5,759/-	₹ 5,759/-
8.	Attendant Charges	--	₹ 12,000/-
	Total Rounded off	₹ 3,59,159/- ₹ 3,59,200/-	₹ 3,76,904/-

23. The compensation is thus enhanced from ₹3,59,200/- to ₹3,76,904/-.
24. The enhanced compensation of ₹ 17,704/- shall carry interest @ 7.5% per annum from the date of filing of the petition till its deposit.
25. The Appellant United India Insurance Company Limited is directed to deposit the enhanced compensation along with interest with the Claims

Tribunal within six weeks, which shall be released in favour of the Claimant on deposit.

26. Both the Appeals stand disposed of in above terms.
27. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 09, 2012
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