

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

Date of decision: 8th October, 2012

+ **MAC. APP. 1052/2011**

DR. ARVIND KUMAR Appellant
Through: Mr. S.N. Parashar, Adv.

versus

M/S. U.P.S.R.T.C. & ORS. Respondents
Through Ms. Garima Prashad, Adv. for R-1.
Ms. Manjusha Wadhwa, Adv. for R-4.

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 ₹10,98,500/- awarded in favour of the Appellant for having suffered injuries resulting in permanent disability in respect of the right upper limb to the extent of 40% in a motor vehicle accident which occurred on 08.04.2008.
2. On 08.04.2008 the Appellant who had completed his BDS and was doing his internship was proceeding on his motorcycle No.DL-7S-AJ-5489 towards D.J. Dental College, Newari Road, Modi Nagar, U.P. He was hit by a UP State Road Transport Corporation (UPSRTC) bus No.UP-15-Y-9852 which was driven by Respondent No.2 in a rash and negligent manner. He (the Appellant) fell down and suffered crush injuries on his right palm, wrist joint, fracture of both bones of right hand, half dorsal of right hand etc. etc. He was removed to Jeevan Hospital, Modi Nagar, Ghaziabad and was then shifted to Sir Ganga Ram Hospital, New Delhi.

The Appellant remained admitted in Sir Ganga Ram Hospital from 08.04.2008 to 16.04.2008 and then from 11.06.2008 to 15.06.2008. He underwent successive surgeries, bone grafting, bone plating of both bones and finger flaps coverage was done. The Appellant was again admitted in Medcity Hospital, Gurgaon for skin grafting on 18.02.2011. The Claims Tribunal dealt with the gravity of injury and the disability and awarded compensation in Para 18 of the judgment which is extracted hereunder:-

“18. I have gone through the material on record. The discharge summary issued by Sir Ganga Ram Hospital shows that the petitioner suffered crush avulsion injury in right hand and distal forearm with fracture both bone right forearm and he was admitted on 08.04.2008 and was discharged on 15.04.2008 and he was again admitted on 08.05.2008 when external fixator was removed, debridement of hand and forearm was done. The disability certificate Ex.P-2 issued by GTB hospital shows that the petitioner suffered disability of 40% in relation to right hand. The petitioner is a Dentist and must be requiring the use of both the hands for treatment of the patients. It cannot be disputed that profession of petitioner will suffer due to said injury. Dr. Jai Mala deposed that a Dentist is required to perform root canal of the teeth, Extraction of teeth, minor surgeries, minor surgical procedures of teeth, scaling and fracture, fixation of jaw, apisection dentures (fixed and removal). The functional disability can be taken to be 40%. There is no income proof of the petitioner. Petitioner was doing internship of BDS at the time of accident. In the absence of any material on record the income of the petitioner is assessed to be Rs. 6,000/- per month. Therefore the loss of future earning due to disability can be calculated by multiplying the annual income with percentage of disability and with multiplier of 18. The total loss in future earning on account of disability comes to Rs. M.A.C. Petition No. 1143/10 Page 6/85, 18,400/- (Rs. 1,20,000/- x 18 x 0.4). The petitioner was 23 years of age at the time of accident. Bills are for Rs.4,64,932/-. Keeping in view the facts and circumstances, I consider the following amount to be the just compensation to the petitioner:-

1 Compensation towards pain and sufferings Rs.55,000/-

<i>2 Loss of amenities, enjoyment and compensation for disfiguration</i>	<i>Rs.30,000/-</i>
<i>3 Loss of earning capacity due to injuries</i>	<i>Rs.5,18,400/-</i>
<i>4 Loss in marriage prospects</i>	<i>Rs.30,000/-</i>
<i>5 Expenses towards medical bills</i>	<i>Rs.4,64,932/-</i>

Therefore, in my opinion the petitioner is entitled to Rs. 10,98,332/- (rounded off to Rs. 10,98,500/-) which shall be the just compensation to petitioner.”

3. It is urged by the learned counsel for the Appellant that the compensation of ₹5,18,400/- awarded towards loss of earning capacity is wholly inadequate. On account of the injuries suffered, the Appellant incapacitated to work as a dental surgeon. In any case, no patient would approach the doctor with such a disability for his treatment. It is thus, urged that the compensation should have been awarded on 100% loss of earning capacity.
4. It is further urged that the Appellant was a qualified dental surgeon, aged 23 years and award of compensation on assuming his income to be ₹6,000/- per month was on the lower side. It is stated that no compensation has been awarded towards special diet, conveyance charges and attendant charges.
5. The trend of the Superior Courts is to award full and fair compensation. In the case of *Raj Kumar v. Ajay Kumar & Anr., 2011 (1) SCC 343*, the Supreme Court observed that the object of awarding damages is to make good the loss suffered as a result of the wrong done as far as money can do in a fair, reasonable and equitable manner. Paras 5 and 6 of the report are extracted hereunder:-

“5. The provision of the Motor Vehicles Act, 1988 ('the Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. [See C.K. Subramonia Iyer v. T. Kunhikuttan Nair, AIR 1970 SC 376, R.D. Hattangadi v. Pest Control (India) (P) Ltd., 1995 (1) SCC 551 and Baker v. Willoughby, 1970 AC 467.

6. 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.”

7. 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.”

8. In *Kavita v. Deepak & Ors.*, Civil Appeal No.5945/2012 decided on 22.08.2012, the Supreme Court laid down that an attempt should always be made to award adequate compensation not only for physical injury and treatment but also for the loss of earning and inability to lead a normal life and enjoy the amenities, which would have been enjoyed but for the disability caused due to the accident.
9. As per the disability certificate Ex.P-2, the Appellant suffered permanent disability in respect of his right hand on account of locomotor impairment to the extent of 40%. He (the Appellant) examined PW-6 Dr. Jai Mala, owner of Gupta Nursing Home with whom he was working as an intern at the time of the accident. She testified as under:-

“I have brought my identity card and certificate of renewal of registration under the Dentists Act. The copy of the same are collectively Ex.PW-6/1 (OSR). After completion of BDS, a dentist

mainly work of Root Canal of the teeth and Extraction of teeth, minor surgeries, minor surgical procedures of teeth, scaling and fracture, fixation of jaw, apisection dentures (fixed and removal).

If a Dentist suffered injuries on his/her right working hand, fingers and palm, he is unable to do surgeries and all dental procedures and work of Root Canal of the teeth and Extraction of teeth, minor surgeries, minor surgical procedures of teeth, scaling and fracture, fixation of jaw, apisection dentures (fixed and removal).

After seeing the injuries of doctor, the patient will refuse/hesitate to take the dental treatment from the said doctor. Even in MDS, practical is required besides the theoretical part. The petitioners had worked with me for about three months and I had to remove him from the job because there was reduction in number of the patients. The patient were hesitant in getting treatment from the petitioner. The petitioner was also not able to perform his job because of injuries. I have been running my clinic for the last 7 months. I am earning near about 30000/- per month. I have done BDS four years ago. Before starting my clinic, I was doing job and was earning ₹15,000/- per month. I was working only in morning shift.”

10. Thus, it may be seen that a Dentist is expected to perform very minute dental procedure and surgeries. He has, therefore, to be very precise. PW-6 instead of telling much about the Appellant's physical disability in performing this procedure testified that a patient would be hesitant in getting treatment from a Dentist with a disability. No other expert evidence was produced by the Appellant. In view of this and the disability certificate Ex.P-2 which shows 40% locomotor impairment in relation of the Appellant's right hand, I would not interfere with the Claims Tribunal discretion in assuming the loss of earning capacity only to the extent of 40%.
11. However, taking Appellant's income as just ₹6,000/- per month was highly on the lower side. PW-6 testified that she was earning a sum of

₹30,000/- per month. Before starting her clinic she was working on a salary of ₹15,000/- per month. This part of PW-6's testimony was not challenged in cross-examination. Thus, I would assume that the Appellant would have earned at least ₹15,000/- per month on joining any Dental Clinic. The Appellant would be entitled to addition of 30% on the basis of the judgment of Supreme Court in *Santosh Devi v. National Insurance Company Ltd. & Ors., 2012 (4) SCALE 559*. The loss of earning capacity comes to ₹ 16,84,800/- (15,000/- + 30% x 12 x 18 x 40%).

12. Keeping in view the fact that the Appellant had to be admitted in hospital on three occasions though the period of hospitalization was about 12-13 days only, he must have taken at least four months to recover from the injuries. In the circumstances, I would award him a sum of ₹10,000/- each towards conveyance charges and special diet.
13. The Appellant suffered crush injury on his right hand. He would be unable to attend to his own work till the fracture and crush injury was completely healed. I would, therefore, award him a sum of ₹10,000/- (2,500/- x 4) towards attendant charges for the period of four months.
14. The overall compensation is recomputed as under:-

Sl.No.	Compensation under various heads	Awarded by this Court
1.	Pain and Suffering	₹55,000/-
2.	Loss of Amenities, Enjoyment and Disfigurement	₹ 30,000/-
3.	Loss of Earning Capacity	₹ 16,84,800/-

4.	Loss of Marriage Prospects	₹ 30,000/-
5.	Medical Bills	₹ 4,64,932/-
6.	Conveyance Charges	₹ 10,000/-
7.	Special Diet	₹ 10,000/-
8.	Attendant Charges	₹ 10,000/-
	Total	₹ 22,94,732/-

15. The compensation is thus enhanced from ₹10,98,500/- to ₹ 22,94,732/-.
16. The enhanced compensation of ₹11,96,232/- shall carry interest @ 7.5% per annum from the date of filing of the petition till its deposit.
17. Respondent No.4 the National Insurance Company Limited is directed to deposit the enhanced compensation along with interest with the Claims Tribunal within six weeks.
18. Eighty percent of the enhanced compensation shall be held in fixed deposit for a period of four years, eight years, twelve years, sixteen years and twenty years in equal proportion. Rest 20% shall be released on deposit.
19. The Appeal is allowed in above terms.
20. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 08, 2012
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