

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

Date of decision: 6th September, 2012

+ **MAC APP. 953/2011**

NASEEM Appellant

Through: Mr. O.P. Mannie, Adv.

versus

PRAKASH VIR & ORS. Respondents

Through: Ms. Shantha Devi Raman, 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 ₹ 3,88,000/- awarded in favour of the Appellant for having suffered injuries in a motor vehicle accident which occurred on 02.12.2008.
2. In the absence of any Appeal by the driver, owner or the Insurer, the finding on negligence has attained finality between the parties.
3. The Appellant suffered pan facial injury with Rt. globe rupture (fracture Rt. zygoma, anterior & lateral wall of Rt maxilla, Rt. Pterygoid hard palate, lateral wall of Rt. Orbit), pelvic fracture, Rt. shaft of femur and Rt. B/B leg fracture.
4. He remained admitted in Jai Prakash Narayan Apex Trauma Centre from 03.12.2008 to 16.12.2008. He also suffered loss of vision to the extent of

30% in respect to his right eye. The Claims Tribunal awarded a compensation of ₹ 3,88,000/- which is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Treatment Expenses	₹8,000/-
2.	Special Diet & Conveyance	₹ 10,000/-
3.	Permanent Disability & Loss of Income	₹ 2,70,000/-
4.	Pain & Suffering	₹ 50,000/-
5.	Disfiguration/Loss of Future Expectations of Life	₹ 50,000/-
	Total	₹ 3,88,000/-

5. It is urged by the learned counsel for the Appellant that the compensation awarded is inadequate. It is contended that the Appellant was working as a taxi driver. On account of loss of vision in the right eye, he suffered 100% loss of earning capacity. Thus, the compensation awarded towards loss of future earning capacity is very low.
6. It is contended that the no compensation was awarded towards loss of amenities/loss of matrimonial prospects and Attendant charges. While awarding loss of earning capacity, deceased's future prospects were not considered.
7. On the other hand, learned counsel for the Respondent Insurance Company supports the impugned judgment. She states that on account of

loss of vision to the extent of 30% in one eye there cannot be loss of earning capacity to the extent of 30%.

8. While dealing with the issue of loss of earning capacity, the Claims Tribunal observed as under:-

“15. The disability certificate of petitioner refers to 30% disability with reference to his right eye. The disability of the petitioner will positively effect his avocation and it appears to me upon appreciation of the entire circumstances that the earning capacity of the petitioner might have suffered to the tune of 30% due to disability caused by the accident as eye is a vital organ for any avocation and even the day-to-day functioning of the petitioner are going to be affected due to the said disability. As per para 3 of the evidence-affidavit of the petitioner, he was a driver by profession at the time of the accident and he could not work about 8 months. Although, the petitioner has claimed to be earning ₹6,000/- per month but the petitioner has not placed on record even a single document showing his income or avocation. In the absence of any cogent evidence on record, his monthly income can be taken to be the minimum wage of an skilled workman as notified by Delhi Government and the same was ₹4,107/- at the time of accident (02.12.2008). As per the copy of the ration card, Ex.PW2/37, the petitioner was about 18 year old as on 28.01.2005 hence, he was about 22 years at the date of accident (02.12.2008) for which the multiplier, in terms of judgment of the Hon’ble Supreme Court of India in Sarla Verma Vs. DTC decided on 15.4.2009 in CA No.3483/08, can very well be taken as 18. Therefore, total loss of income and compensation on account of disability comes to be $₹4,107 \times 12 \times 18 \times 30/100 = ₹2,66,133.60/-$ which is rounded off to ₹2,70,000/-.”

9. At the time of filing of the Appeal, the Appellant’s driving licence to drive LTV was placed on record. The Appellant was driving a Maruti Van at the time of the accident when he was hit by a tractor No.HR-30G-3571 who came on the wrong side. Thus, it is established that the Appellant was a qualified driver to drive a commercial vehicle.

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 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.”

11. In this case, the Appellant did not bring any medical evidence to prove as to how his earning capacity would be impacted on account of loss of vision in the right eye to the extent of 30%. The Claims Tribunal opined that the eye is a vital organ for any vocation and even for day to day functioning and thus, took the loss of earning capacity as 30%. It has to be borne in mind that a driver drives a vehicle during the day and sometimes even also at night. Vision is an important element for driving. In the circumstances, I would not interfere with the guess work made by the Claims Tribunal in awarding compensation to the extent of 30% of loss of earning capacity.
12. There was no evidence with regard to future prospects.
13. 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."

14. Thus, there would be an addition of 30% in the Appellant's income to compute the loss of dependency.
15. The loss of future earning capacity would thus come to ₹3,45,973/- (4107/- + 30% x 12 x 18 x 30%).
16. No compensation was awarded to the Appellant with regard to loss of income for the time he was unable to attend any work. The Appellant claimed that he was unable to resume his work for a period of eight months. No medical evidence was produced in this Court. The Appellant remained admitted in Jai Prakash Narayan Apex Trauma Centre for 14 days. He suffered multiple fractures and injury to his eye. OPD card Exs.P-2/1 to PW-2/5 have been placed on record to show that he was attending the hospital at least till 17.03.2009 when he was advised further treatment and medicines.
17. In the circumstances, I am of the view that the Appellant must have taken about six months to resume his work. He is therefore, entitled to compensation of ₹24,642/- (4107/- x 6) for loss of income for six months.

18. Considering the nature of injuries, the compensation of ₹50,000/- awarded towards disfigurement and loss of expectations in life also covered the compensation towards loss of amenities/diminished marriage prospects as there was no permanent disability except loss of vision in one eye to the extent of 30%.
19. In view of the foregoing discussion, there is an enhancement of ₹1,00,615/- in the overall compensation which shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.
20. Respondent No.3 National Insurance Company Limited is directed to deposit the enhanced compensation along with interest in UCO Bank, Delhi High Court Branch, New Delhi within six months.
21. Sixty percent of the enhanced compensation shall be held in fixed deposit for a period of two years and four years in equal proportion. Rest 40% shall be released on deposit
22. The Appeal is allowed in above terms.
23. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

SEPTEMBER 06, 2012

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