

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

Date of decision: 26th November, 2012

+ **MAC. APP. 945/2011**

BHUWAN NATH GOSWAMI Appellant

Through: Mr. Navneet Goyal, Adv. with
Ms. Suman N. Rawat, Adv.

versus

GULAM MOHD. SADIQ & ORS. Respondents

Through Mr. D.K. Sharma, 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 ₹26,85,512/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the Appellant Bhuwan Nath Goswami for having suffered injuries in a motor vehicle accident which occurred on 26.10.2004.
2. The finding on negligence is not disputed by the driver, owner and the Insurer, thus, the same has attained finality.
3. In the accident, apart from injuries on other parts of the body, the Appellant suffered head injury. The Appellant was issued a temporary Disability Certificate dated 04.01.2006 Ex. P-25 declaring him to be disabled to the extent of 90%. Subsequently, by the Medical Board of Lal Bahadur Shastri Hospital, Khichripur, Delhi a medical certified Ex.P-26 was issued declaring the Appellant to be a case of *hemi paresis* with

severe speech disorder post head injury. He was declared to be suffering from 87.5% permanent physical impairment in relation to his whole body.

4. The Claims Tribunal awarded the compensation of ₹26,85,512/- which is tabulated hereunder:-

Sl.No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Compensation towards Pain and Suffering	₹1,00,000/-
2.	Compensation for loss of amenities, enjoyment and disfiguration	₹ 50,000/-
3.	Compensation for loss of future earning due to injuries	₹ 24,52,128/-
4.	Loss of Earning for four months	₹ 58,384/-
5.	Conveyance & Special Diet	₹ 25,000/-
	Total	₹ 26,85,512/-

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

- (i) As per the certificate Ex.PW-3/A the Appellant's salary was proved as ₹17,755/-. The Claims Tribunal erred in taking the salary as ₹14,596/-.
- (ii) No compensation was awarded towards Attendant charges.
- (iii) The compensation awarded towards pain and suffering and loss of amenities was on the lower side.

- (iv) The Appellant was not granted any compensation in respect of the amount spent on treatment which was not reimbursed by his employer.
6. Section 168 of the Motor Vehicles Act, 1988 (the Act) enjoins a Claims Tribunal to determine the amount of compensation which is just and reasonable.
7. In *General Manager, Kerala Road Transport Corporation, Trivandrum v. Susamma Thomas & Ors.*, (1994) 2 SCC 176, the Supreme Court held as under: -

“5.....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'. All this means that the sum awarded must be fair and reasonable by accepted legal standards.”

8. Of late, 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.

LOSS OF FUTURE EARNING CAPACITY

9. I have before me the Trial Court record. The wife of the Appellant as PW-4 deposed that her husband was earning ₹17,755/- per month. Whereas as per the record produced by PW-3 Shri Raman Gupta, Senior Manager, Nainital Bank Limited and PW-7 Shri Kumar Saurabh, Senior Manager (Law), Nainital Bank Limited the Appellant's salary in October, 2004, that is, at the time of the accident was only ₹14,596/- per month. Since the Appellant was in settled employment, an addition of 30% was required to be made on the basis of the judgment in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121. At the same time, deduction towards liability of income tax was also required to be made. The loss of future earning capacity thus comes to ₹28,23,766/- (14,596/- x 12 – ₹20,000/- (income tax) + 30% x 14).

PAIN AND SUFFERING

10. As per the Disability Certificate Ex.P-26 and the photographs Ex.P-37 to P-39, the Appellant would be in vegetative state. Learned counsel for the Appellant places reliance on a latest judgment of the Supreme Court in

Kavita v. Deepak & Ors., Civil Appeal No.5945/2012 (SLP (C) No.7396/2011) decided on 22.08.2012 where a compensation of ₹3,00,000/- was awarded towards pain and suffering. Undoubtedly, this case is similar to *Kavita*. In the circumstances, I would make a provision of ₹3,00,000/- towards pain and suffering.

LOSS OF AMENITEIS IN LIFE

11. The Claims Tribunal awarded a compensation of ₹50,000/- towards loss of amenities in life. In *Raj Kumar v. Ajay Kumar & Anr., 2011 (1) SCC 343*, it was held that where any compensation more than 50% of the future loss of earning capacity is granted, only a nominal compensation ought to be awarded towards loss of amenities in life otherwise, it will be duplication of the award of compensation. Taking cue from *Raj Kumar*, I am not inclined to enhance the compensation of ₹50,000/- towards loss of amenities in life.

ATTENDANT CHARGES

12. It is amply proved from the Disability Certificate and the photographs as stated earlier that the Appellant is in vegetative state. He, therefore need services of an Attendant to look after him. Even if, these services are rendered by one or the other family members, he is entitled to be compensated for the same.
13. 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 family members for the benefit of the tortfeasor. In the circumstances, I would

award a compensation towards Attendant charges @ ₹2,000/- per month on a multiplier of 14 which comes to ₹3,36,000/- (₹2,000/- x 12 x 14).

14. 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 capacity	₹ 24,52,128/-	₹ 28,23,766/-
2.	Pain and Suffering	₹1,00,000/-	₹3,00,000/-
3.	Loss of amenities in Life	₹ 50,000/-	₹ 50,000/-
4.	Attendant Charges	--	₹ 3,36,000/-
5.	Loss of Earning for four months (as awarded by the Claims Tribunal)	₹ 58,384/-	₹ 58,384/-
6.	Conveyance & Special Diet (as awarded by the Claims Tribunal)	₹ 25,000/-	₹ 25,000/-
	Total	₹ 26,85,512/-	₹ 35,93,150/-

15. The overall compensation is thus enhanced from ₹26,85,512/- to ₹35,93,150/-.
16. The enhanced compensation of ₹9,07,638/- shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.
17. The enhanced compensation along with interest shall be deposited with the Claims Tribunal within six weeks.
18. Seventy five percent of the enhanced compensation shall be held in fixed deposit in any Nationalized Bank for a period of ten years. Rest 25%

shall be released on deposit. The Appellant would get quarterly interest on the fixed deposit.

19. The Appeal is allowed in above terms.
20. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

NOVEMBER 26, 2012
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