

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

Date of decision: 18th October, 2012

+ **MAC. APP. 774/2010**

PRASHANT KUMAR Appellant

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

versus

DELHI TRANSPORT CORPORATION & ORS. Respondents

Through: Mr. J.N. Aggarwal, Adv. for R-1.
Mr. S.K. Ray, Adv with
Mr. Amitava Poddar, 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 ₹40,000/- awarded in favour of the Appellant Prashant Kumar who suffered injuries in a motor vehicle accident which occurred on 08.07.2008.
2. In the absence of any Appeal by the driver, owner and the insurer, the finding on negligence has attained finality.
3. On the fateful day, the Appellant was in the process of boarding bus No.DL-1PB-3078. The driver suddenly started the bus as a result of which the Appellant suffered injuries on his left arm and pelvis. He was immediately removed to Maharishi Balmiki Hospital and thereafter shifted to St. Stephens Hospital. The Claims Tribunal awarded the compensation of ₹40,000/- which is tabulated hereunder:-

Sl.No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Medical Expenses	₹5,000/-
2.	Special Diet / Conveyance	₹ 5,000/-
3.	Pain & Suffering	₹ 30,000/-
	Total	₹ 40,000/-

4. It is urged by the learned counsel for the Appellant that PW-1 Balraj Dhara, father of the Appellant spent a sum of ₹ 1,00,000/- on Appellant's treatment, whereas a sum of just ₹5,000/- was awarded towards medical treatment. The compensation of ₹5,000/- awarded towards special diet and conveyance and ₹30,000/- towards pain and suffering is grossly on the lower side. No compensation was awarded towards loss of income to the Appellant.
5. On the other hand, learned counsel for the Respondent Insurance Company argues that the compensation awarded is just and reasonable.
6. Section 168 of the Motor Vehicles Act, 1988 (the Act) enjoins just compensation. 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.”

MEDICAL EXPENDITURE

7. As stated above, Balraj Dhara PW-1 the Appellant's father has claimed that a sum of ₹1,00,000/- was spent on Appellant's treatment. A bill Ex.PW-1/3 and various receipts were proved. The Claims Tribunal declined to award compensation in respect of medical treatment received in St. Stephens Hospital primarily on the ground that on the bill Ex.PW-1/3 the name of the company was mentioned as Delhi Jal Board. The Appellant moved an application for additional evidence to prove that no reimbursement was made by Delhi Jal Board.
8. Appellant examined Balwant Singh, Chief Water Analysis of Appellant's father's employer (DJB). He deposed that Balraj Dhara who was working as a Filter Supervisor did not receive any payment in respect of the treatment of his son. He also produced the certificate dated 21.03.2012 in this regard. I have before me the Trial Court record. Although, the bill is in the name of Prashant Kumar, son of Balraj Dhara, but at the bottom it is mentioned "Company name Delhi Jal Board". The receipts for ₹43,833/- were issued in the name of Prashant Kumar. Thus, it was evident that the payment had not been made by Delhi Jal Board but only by the Appellant's father. If the Claims Tribunal had any doubt about reimbursement of this amount by the Appellant's father, it could have asked the Appellant to produce the witness from DJB to depose in this regard. Moreover, the original receipts were filed with the Claims Tribunal. Without the original receipts any Govt. Department would not make any payment to an employee. In any case, it is established that a sum of ₹43,838/- was paid to the hospital towards treatment as an indoor patient. Some small receipts for further treatment have been produced.

Although, there is no evidence with regard to the expenditure of ₹1,00,000/- as claimed by the Appellant's father, considering the nature of injuries and duration of the treatment, it would be reasonable to hold that the Appellant/Appellant's father himself has spent a sum of ₹60,000/- on his treatment. I accordingly award him a sum of ₹60,000/- towards expenditure on treatment.

PAIN AND SUFFERING

9. The Appellant suffered fracture of both bones left forearm for which surgery was performed in St. Stephens Hospital on 17.07.2008. The Appellant also suffered fracture of sacrum, which as per the discharge summary was managed conservatively. The Appellant remained admitted in the St. Stephens Hospital from 08.07.2008 to 25.07.2008, i.e. for a period of 17 days and remained as an outdoor patient for quite some time. The fracture must have taken at least three months to heal.
10. It is difficult to measure in terms of money the pain and suffering which is suffered by the claimant on account of serious injuries caused to him in a motor accident. Since the compensation is required to be paid for pain and suffering an attempt must be made to award compensation which may have some objective relation with the pain and suffering underwent by the victim of a motor accident. For this purpose, the Claims Tribunal and the Courts normally consider the nature of injury; the parts of the body where the injuries were sustained; surgeries (if any) underwent by the victim; confinement in the hospital and the duration of the treatment.
11. The compensation of ₹30,000/- awarded towards pain and suffering is on the lower side; the same is enhanced to ₹50,000/-.

LOSS OF INCOME

12. The Appellant entered the witness box as PW-2 and testified that he was a student of 12th standard and was giving tuitions to school children and was earning ₹4,000/- per month. He stated that he could not work for six months. The Appellant's testimony in this regard was not challenged in cross-examination. I would, therefore, assume that the Appellant was earning ₹4,000/- per month by tuition. I have already held that it must have taken at least three months to heal the fracture. The Appellant is, therefore, entitled to a sum of ₹12,000/- towards loss of income for three months.

SPECIAL DIET & CONVEYANCE

13. The Claims Tribunal awarded a lumpsum compensation of ₹5,000/- towards special diet and conveyance. As stated earlier, the Appellant remained admitted for 17 days. He is a resident of Village Barwala which is at quite a distance from St. Stephens Hospital. His attendants must have been visiting him all the way from Barwala. Similarly, considering the nature of injuries, the Appellant would have needed special diet for two-three months. The lumpsum compensation of ₹5,000/- under this head was wholly inadequate, the same is raised to ₹10,000/- each for special diet and conveyance.

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.	Medical Expenses	₹5,000/-	₹60,000/-

2.	Special Diet Conveyance	₹ 5,000/-	₹ 10,000/- ₹ 10,000/-
3.	Pain & Suffering	₹ 30,000/-	₹ 50,000/-
4.	Loss of Income	--	₹ 12,000/-
	Total	₹ 40,000/-	₹ 1,42,000/-

15. Thus, there is an overall enhancement of ₹1,02,000/- which shall carry interest @ 7.5% per annum from the date of filing of the petition till its payment.
16. Respondent No.3 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 to the Appellant on deposit.
17. The Appeal is allowed in above terms.
18. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 18, 2012

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