

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

*Decided on: 12<sup>th</sup> March, 2012*

+ **MAC.APP. 999/2011**

AJAY KUMAR SINGH ..... Appellant  
Through: Mr.Navneet Goyal and  
Ms.Suman N.Rawat,  
Advocates.

versus

HARJEET SINGH BHATIA & ORS ..... Respondents  
Through: Mr.J.P.N.Shahi, Advocate 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 Appellant seeks enhancement of compensation of ₹ 6,51,406/- awarded for having suffered injuries in an accident which took place on 14.02.2006. The compensation was awarded under the following Heads:-

|                                      |              |
|--------------------------------------|--------------|
| a) Loss of future income             | ₹ 3,08,372/- |
| b) Medical expenses                  | ₹ 1,99,817/- |
| c) Pain and suffering etc.           | ₹ 1,00,000/- |
| d) Special diet & conveyance charges | ₹ 15,000/-   |
| e) Loss of income                    | ₹ 28,217/-   |

2. The Appellant suffered fracture of right femur bone, fracture of both bones of left leg, fracture of nasal bone and injuries on other parts

of the body. The Appellant filed his affidavit Ex.PW-2/A by way of evidence and in para 3 and 4 testified as under:-

*“I say that I was immediately taken to B.J.R.M. Hospital, where the doctors prepared my M.L.C. No. E-9580/06. I was shifted to St.Stephen’s Hospital and remained admitted there from 14.02.2006 to 10.03.2006. I was given the medical treatment i.e. (i) BUTTRESS PLATING OF LT. TIBIA USING 8 HOLE PLATE DONE BY DR. V.T. AND MS. UNDER GA ON 21.02.06 (ii) ARCH BAR FIXATION WITH ORIF OF NASAL BONE # AND FOREHEAD LACERATION REPAIR DONE BY DR. BHARAT RATAN UNDER GA ON 21.02.06 (iii) IM NAILING RT. FEMUR USING (11x 36 mm) NAIL UNDER SA BY DR. RKG AND TR ON 24.02.06 (iv) ILIZAROV FIXATOR APPLICATION FOR FRACTOR BB RT. LEG DONE BY DR. M.M. AND MS UNDER SA ON 29.02.06 and remained admitted in the same Hospital from 16.05.06 to 19.05.06 where I was given the treatment i.e. BONE GRAFTING ON 17.05.06 BY DR. TR/PB. The Discharge Slips are Exh. PW-1/1-2.*

*I say that I got sustained 50% permanent disability due to the injuries as per the Disability Certificate, issued by Medical Board of B.J.R.M. Hospital. My 50% disability renders me 100% disable for various jobs, which I cannot do normally due to the said accident. The Copy of disability certificate is already Exh. PW-1/A (O.S.R.)”*

3. It is urged by the learned counsel for the Appellant that although Appellant suffered 50% disability in respect of his lower limbs as deposed by PW-3, yet for calculating loss of earning capacity the disability was taken to be 25% in respect of the whole body. It is urged that the compensation awarded for loss of earning is inadequate. It is stated that compensation under the head of pain and suffering is

also on the lower side.

4. In *Raj Kumar v. Ajay Kumar & Anr.*, 2011 (1) SCC 343, the Supreme Court brought out the difference between the permanent physical disability suffered in an accident and the functional disability affecting the earning capacity. The relevant portion of the report is extracted hereunder :-

*10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.*

*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.*

*12. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence:*

*(i) whether the disablement is permanent or temporary;*

*(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement,*

*(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person.*

*If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.*

13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

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.”*

5. In this case the Appellant claimed that he was in private employment and was earning ₹ 15,000/- per month. No evidence of employment or the nature of job carried by the Appellant was given. In the circumstances, the Claims Tribunal took the minimum wages of a graduate to compute Appellant's income.

6. The nature of injuries suffered by the Appellant was very serious, he had to undergo various surgeries and he remained admitted in the hospital from 14.02.2006 to 10.03.2006 and from 16.05.2006 to 19.05.2006. At the same time, in the absence of any medical evidence to prove that his earning capacity was affected on account of the injuries sustained by him, the Appellant was not entitled to any compensation under the head of Loss of Future Earning Capacity. The Appellant might have difficulty throughout his life in carrying out his day to day activities, in pursuing his employment and he might have difficulty in walking, running and squatting. Thus, in the circumstances, the sum of ₹ 3,08,372 awarded by the Claims Tribunal was really towards loss of amenities in life.

7. It is difficult to measure in terms of money the pain and suffering which is suffered by the victim on account of serious injuries caused to him in a motor accident. Since compensation is required to

be paid in terms of money, an attempt must be made to award compensation which may have some objective relation with the pain and suffering underwent by the victim in the 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 duration of the treatment.

8. The Appellant underwent several surgeries as stated in Para 2 of the judgment. The injuries were very serious, yet the compensation of ₹ 1,00,000/- awarded by the Claims Tribunal cannot be said to be meager or low. I hold that the compensation awarded under the head of pain and suffering was just and reasonable.

9. Thus, no interference is called for in the impugned award.

10. The Appeal is devoid of any merit. The same is accordingly dismissed.

11. No costs.

**(G.P. MITTAL)**  
**JUDGE**

**MARCH 12, 2012**  
mr