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

Date of decision: 30th November, 2012

+ **MAC. APP. 1041/2011**

MOHD KASHIM @ SALMAN Appellant
Through: Mr. Navneet Goyal with Ms. Suman N.
Rawat, Advocates.
Versus

ANIL KUMAR & ORS. Respondents
Through: Mr. D.K. Sharma with Mr. Neeraj
Sharma, Advocates for the Respondent
No.3 Insurance Company.

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 ₹2,40,216/- awarded by the Motor Accident Claims Tribunal(the Claims Tribunal)in favour of the Appellant for having suffered grievous injuries in a motor vehicle accident which occurred on 23.12.2005.
2. In the absence of any Appeal by the driver, owner or the Insurance Company, the finding of negligence has attained finality.
3. The Appellant who was aged about 14 years at the time of the accident suffered crush injury on his left leg. Immediately after the accident, he was removed to Jeevan Hospital, Modi Nagar, Ghaziabad where he remained admitted from 23.12.2005 to 03.01.2006. The Appellant remained under treatment for about a year in GTB Hospital, Shahdara and then in Swami Dayanand Hospital, Shandara (Exs.PW3/2 to Exs.

PW3/23). The Appellant suffered permanent disability to the extent of 41% locomotor impairment in respect of his left lower limb as per the disability certificate Ex.PW3/68 issued by the Medical Board of GTB Hospital. The Claims Tribunal awarded a compensation of ₹2,40,216/- along with interest @ 7.5% per annum, which is tabulated hereunder:

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Pain & Suffering	₹50,000/-
2.	Loss of amenities, enjoyment and disfiguration	₹ 50,000/-
3.	Loss of Earning Capacity	₹ 56,250/-
4.	Loss of Marriage Prospects	₹ 45,000/-
5.	Special Diet and Conveyance	₹ 10,000/-
6.	Expenses towards Medical Bills	₹ 28,966/-
	Total	₹ 2,40,216/-

4. The following contentions are raised on behalf of the Appellant:
- (i) The Appellant was working as a book binder and earning a salary of ₹6,280/- per month. The Claims Tribunal erred in granting him future loss of earning capacity on notional income of ₹15,000/-.
 - (ii) The compensation towards pain and suffering and loss of amenities and loss of marriage prospects is on the lower side.

- (iii) The lumpsum compensation of ₹10,000/- awarded towards special diet and conveyance is very low.
5. On the other hand, the learned counsel for Respondent Insurance Company argues that the Claims Tribunal had rightly disbelieved the salary certificate Ex.PW3/69 filed by the Appellant. Since the Appellant was aged 14 years, the Claims Tribunal rightly granted compensation on the basis of notional income of ₹15,000/- per month.

LOSS OF EARNING CAPACITY:

6. In personal injury cases, the trend of the Claims Tribunals and 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 of the report is 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.

7. As per the Appellant's case, he was aged 14 years at the time of the accident. In his cross-examination recorded on 03.11.2010, the Appellant deposed that he was working with his employer (as book binder) for a period of 7-8 years before the accident. This would mean that the Appellant was working with M/s. Malik Book Binder since he was aged 6-7 years. The Claims Tribunal also found other infirmities in the Appellant's claim that he was working as a book binder. Thus, the Claims Tribunal rightly discarded the salary certificate Ex.PW3/69, but at the same time, it has to be borne in mind that the Appellant was to grow in age and was to work. He would have worked at least as an unskilled worker and earned appropriate wages for the same. Thus, the Claims Tribunal ought to have taken into consideration the minimum wages of an unskilled worker to award compensation towards loss of earning capacity. Moreover, the Appellant would also be entitled to an addition of 30% in the minimum wages on the basis of the Report of the Supreme Court in *Santosh Devi v. National Insurance Company Ltd. & Ors., 2012 (4) SCALE 559*.
8. As per the disability certificate, the Appellant suffered locomotor impairment in respect of his left lower limb to the extent of 41%. The locomotor disability is a person's inability to execute distinctive activities associated with moving himself and moving the objects from place to place. Thus, the Appellant would have difficulty in moving, walking, climbing and sitting which would definitely affect his earning capacity.
9. At the same time, no expert evidence has been produced by the Appellant to show the exact loss of earning capacity. The Claims Tribunal made an assessment that the 41% locomotor impairment would result in about 25% loss of earning capacity. I would agree with the assessment made by

the Claims Tribunal and would award him a compensation of ₹2,22,183/- (₹3165/- + 30% x 12 x 18 x 25%) towards loss of future earning capacity as against an award of ₹56,250/- granted by the Claims Tribunal.

PAIN AND SUFFERING, LOSS OF AMENITIES, LOSS OF MARRIAGE PROSPECTS:

10. It is difficult to measure the pain and suffering in terms of money which has been 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. I have before me the Trial Court record. As stated earlier, immediately after the accident, the Appellant was removed to Jeevan Hospital, Modi Nagar, Ghaziabad where debridement of the wound was done. He was discharged from the Hospital on 31.01.2006, that is, after ten days. There are OPD slips Ex.PW3/2 to Ex.PW3/17 which show that the Appellant was constantly visiting Guru Teg Bahadur Hospital. He had healed ulcer which was not improving in spite of repeated antibiotics. For full one year(year 2006), the Appellant remained under treatment in Guru Teg Bahadur Hospital. Then in the year 2009-2010, he was again under treatment in Swami Dayanand Hospital, Shahdara and GTB Hospital. It is difficult to imagine pain and suffering suffered by the Appellant on account of the continued ulcer with pus and locomotor

impairment. In the circumstances, I would enhance the compensation awarded towards pain and suffering from ₹50,000/- to ₹1,00,000/-, for loss of amenities from ₹50,000/- to ₹75,000/- and for loss of marriage prospects from ₹45,000/- to ₹75,000/-.

12. Similarly, a lumpsum compensation of ₹10,000/- towards special diet and conveyance is raised to ₹20,000/- each because of long duration of treatment and continuous follow-up in GTB Hospital, Swami Dayanand Hospital.
13. The compensation awarded is recomputed hereunder:

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Pain & Suffering	₹50,000/-	₹1,00,000/-
2.	Loss of amenities, enjoyment and disfiguration	₹ 50,000/-	₹75,000/-
3.	Loss of Earning Capacity	₹ 56,250/-	₹2,22,183/-
4.	Loss of Marriage Prospects	₹ 45,000/-	₹75,000/-
5.	Special Diet and Conveyance	₹ 10,000/-	₹40,000/- (₹20,000/- each)
6.	Expenses towards Medical Bills	₹ 28,966/-	₹ 28,966/-
	Total	₹ 2,40,216/-	₹ 5,41,149/-

14. The enhanced compensation of ₹3,00,933/- shall carry interest @ 7.5% per annum from the date of filing of the Petition till its deposit. 75% of the compensation shall be held in fixed deposit in a nationalized bank as per choice of the Appellant for a period of five years and ten years in equal proportion on which the Appellant shall be entitled to quarterly interest. Rest of the amount shall be released to him on deposit.
15. The Respondent No.3 Insurance Company is directed to deposit the enhanced amount of ₹3,00,933/- along with interest with the Claims Tribunal within six weeks.
16. The Appeal is allowed in above terms.
17. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

NOVEMBER 30, 2012
pst