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

Date of decision: 24th April, 2012

+ **MAC. APP. No.741/2010**

MOHD. NAFIS AHMAD	 Appellant
Through:	Mr. R.K. Bacchan with
	Mr. Divyanshu Mishra, Advocates
Versus	

RAJESH KUMAR & ORS	 Respondents
Through:	Mr.Saurabh Sharma, Advocate for
	Respondents No.1 and 2.
	Ms. Gunjan, Advocate for
	Mr. Kanwal Chaudhary, Advocate
	for Respondent No.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 ₹7,06,916/- awarded to the Appellant for having suffered injuries in a motor accident which occurred on 06.08.2006.
2. The Claims Tribunal by the impugned judgment/order dated 01.06.2010 and 06.07.2010 awarded the compensation which is tabulated hereunder:

S.No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Medical Expenses	₹1,01,720/-
2.	Conveyance	₹25,000/-
3.	Special Diet	₹15,000/-
4.	Attendant Charges	₹10,000/-
5.	Loss of Income	₹59,616/-
6.	Loss of Prospective Income	₹2,20,580/-
7.	Pain & Suffering, Curtailment of Enjoyment of Life	₹2,50,000/-
8.	Future Medical Expenses	₹25,000/-
	Total	₹7,06,916/-

3. The following contentions are raised on behalf of the Appellant:
- The Appellant was engaged in manufacturing springs in the name and style of M/s U Like Springs. He was an Income Tax assessee and filed an Income Tax Return for the income of ₹51,000/- in the A.Y. 2003-04. He filed an Income Tax Return for ₹1,39,300/- (including agricultural income of ₹60,000/-) for the A.Y. 2004-05. The office copy of the Income Tax Returns were duly proved as Ex.PW1/G (collectively). The Claims

Tribunal instead of taking the income on the basis of Income Tax Returns erred in taking minimum wages to compute the loss of income and loss of earning capacity.

- ii) The Appellant suffered 74% disability in respect of his left lower limb because of FUC of compound fracture of both bone left leg with discharging sinus. By the disability certificate dated 26.02.2009 issued by the Medical Board of Lal Bahadur Shastri Hospital, the doctors opined that his condition was non-progressive and he was not likely to improve in his permanent disability. The Appellant remained under treatment from 06.08.2006 to 31.01.2009 as an Indoor and Outdoor patient. The compensation for loss of income was awarded just for a period of 18 months and loss of earning capacity to the extent of 37% was very low. The functional disability, in the circumstances, should have been taken as 74%.
- iii) The Appellant was awarded a lumpsum compensation of ₹10,000/- towards attendant charges, although he remained under treatment for a period of almost three years and can still walk only with the help of crutches.
- iv) The compensation awarded towards pain and suffering and other non-pecuniary heads is very low.

4. On the other hand, it is urged on behalf of the Respondent Insurance Company that the Appellant suffered 74% disability in respect of his left lower limb and the Claims Tribunal was right in taking the disability to be 37% in respect of the whole body. The Income Tax Returns, argued the learned counsel, were rightly discarded by the Claims Tribunal as the Income Tax Officer was not produced to prove the genuineness of the Income Tax Returns for the A.Y. 2003-04 and 2004-05. The Claims Tribunal, therefore, rightly took the help of minimum wages fixed under the Minimum Wages Act to award the loss of income and loss of earning capacity. It is urged that the compensation awarded is just and reasonable and does not call for any interference.
5. First of all, I shall deal with the question of the Appellant's income. The Appellant filed his affidavit Ex.P1. He testified that he was the sole bread-earner of his family. He used to earn ₹10,000/- per month. He proved the ITRs for the A.Y. 2003-04 and 2004-05 and the copy of the PAN Card Ex.PW1/G (collectively). As per the ITR for the A.Y. 2003-04, the Appellant returned an income of ₹51,000/- and for the A.Y. 2004-05 he returned an income of ₹1,39,000/- (including income from agriculture as ₹60,000/-). Thus, for the A.Y. 2004-05, the Appellant had an income of ₹79,000/- from his business of manufacturing springs. In cross-examination on behalf of the Insurance Company, the Appellant deposed that

he had produced his ITRs to prove his income. He denied the suggestion that the documents produced by him were fabricated for the purpose of putting up a false claim. The office copy of the ITRs with a receipt from the Income Tax Department were admissible in evidence unless the Respondent proved that those were fabricated. It is urged by the learned counsel for the Respondent Insurance Company that in the A.Y. 2003-04, the Appellant did not have any income from agriculture, whereas in the A.Y. 2004-05 he had an income of ₹60,000/- from agriculture which would lead to an inference that the ITRs were not genuine. I would not agree with the contention raised on behalf of the Insurance Company. The Appellant showed his income as ₹51,000/-(in the A.Y.2003-04) as there was no income from the agriculture. The details of the total tax and various expenditures in running the factory were depicted in both the ITRs. In the absence of any rebuttal from the Insurance Company, I do not find any reason to disbelieve the ITRs (Ex.PW1/G Colly). On adding the income for the A.Y. 2003-04 and 2004-05 (₹51,000/- and ₹79,000/- respectively) (excluding income from agriculture), the average income comes to ₹65,000/- per annum. Since the business could be high or low, I would accept the above said average income to award the loss of income for the period the Appellant was unable to attend to his work and towards the loss of earning capacity.

6. The serious nature of injuries suffered by the Appellant is apparent from the six photographs (mark “A” collectively) placed on the record of the Claims Tribunal. He remained admitted in various hospitals and underwent series of surgeries and procedures, which are extracted hereunder:

S.No.	Name of the Hospital	Period
1.	Lal Bahadur Shastri Hospital	06.08.2006 to 14.09.2006
2.	Lal Bahadur Shastri Hospital	14.09.2007 to 25.09.2007
3.	Bimla Devi Hospital	09.01.2008 to 11.01.2008
4.	Himalayan Hospital	24.06.2008 to 10.07.2008
5.	Himalayan Hospital	07.08.2008 to 09.08.2008
6.	Himalayan Hospital	16.01.2009 to 30.01.2009

7. As stated above, the Appellant remained admitted in various hospitals from 06.08.2006 to 30.01.2009. He underwent successive surgeries and external fixator was fixed to unite the bones. A tube was affixed to pass urine as there was blockage in the urinary track. It is, therefore, established that the Appellant was an Indoor and Outdoor patient and was unable to attend to his work for the period of 06.08.2006 till at least 30.01.2009. Instead of the loss of income for a period of 30 months, at the rate of minimum wages as granted by the Claims Tribunal, I would award a compensation of ₹1,62,500/- (₹65,000/- ÷ 12 X 30) towards the loss of income.

8. The Appellant remained confined to bed during the long duration of his treatment. The treatment papers from various hospitals have been proved on the record before the Claims Tribunal. He needed the services of an attendant to look after him during the period of his treatment. Although, the Appellant deposed that he had employed one person as an attendant to look after him, yet even if some or the other family member rendered gratuitous services to the Appellant, he cannot be denied compensation for the same. I am supported in this view by the judgment of a Division Bench of this Court in *Delhi Transport Corporation and Anr. v. Lalita* AIR 1981 Delhi 558 where this Court held that there cannot be any deduction if domestic help is obtained from a family member. The High Court observed as under:

“.....A wrong doer cannot take advantage of this ‘domestic element’. If the mother renders service to her, instead of a nurse, it is right and just that she should recover compensation for the value of the services that the mother has rendered to her. Mother’s services were necessitated by the wrong doing and the injured should be compensated for it. (Cunnigharn v. Harrison 3 All E.R. 463) The services of a wife and mother are worth more than those of a house-keeper because she is in constant attendance and does many more things than a house-keeper. (Regan v. Williamson (1976) 2 All E.R. 241).”

The minimum wages of an unskilled worker on the date of the accident was ₹3312/-. I, therefore, award him a compensation of ₹99,360/- for a period of 30 months instead of ₹10,000/- awarded by the Claims Tribunal.

9. As far as the loss of future earning capacity is concerned, the Claims Tribunal took the permanent disability to be 37% in respect of the whole body. In fact, it was represented before the Claims Tribunal that the disability should be taken as 37% in respect of the whole body and on Respondent's application, the compensation on account of the loss of earning capacity was reduced from 100% to 37% by an order dated 06.07.2010.
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.

x x x x x x x

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. Thus, the disability might have a different impact on the earning capacity of an injured following a different vocation. In the instant case, the Appellant was running his own small unit for manufacturing springs in the name and style of M/s U Like Springs. He had an income of ₹51,000/- for the A.Y. 2003-04 and an income of ₹79,000/- for the A.Y. 2004-05. As per the summarised details towards the expenditure in his business, the Appellant himself paid a salary of ₹30,000/- to the workers and ₹20,000/- on account of the job work obtained. In the A.Y. 2004-05, he paid a salary of ₹36,000/-. Thus, it is established that the Appellant was himself responsible for looking after the entire manufacturing process. He (the Appellant) suffered injuries resulting into 74% disability in respect of his left lower limb because of compound fracture of both bone left leg with discharging sinus. Although the Appellant testified that he was unable to perform the work either on account of the injuries suffered by him, this disability was rightly taken to be 37% in respect of the whole body considering the nature of job performed by the Appellant. The loss of earning capacity, therefore, would come to ₹3,60,750/- ($₹65,000 \times 37\% \times 15$).
12. The Claims Tribunal awarded a compensation of ₹ 2,50,000/- towards pain and suffering, loss of amenities and loss of

enjoyment of life. In the case of *Govind Yadav v. New India Assurance Co. Ltd.*, 2011(10) SC 683, the Supreme Court granted a compensation of ₹1.5 lakhs towards pain and suffering and ₹1.5 lakhs towards loss of amenities and loss of marriage prospects in an accident resulting in 70% disability on account of amputation of limb which occurred in the year 2004. In this case, the disability certificate shows that the Appellant is unable to walk without the help of crutches. Considering the nature of injuries and duration and the fact that this accident occurred in the year 2006, out of the compensation of ₹2.5 lakhs a compensation of ₹1 lakh can be considered towards pain and suffering and ₹1.5 lakhs towards loss of amenities in life.

13. The compensation is reassessed as under:

S.No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Medical Expenses	₹1,01,720/-	₹1,01,720/-
2.	Conveyance	₹25,000/-	₹25,000/-
3.	Special Diet	₹15,000/-	₹15,000/-
4.	Attendant Charges	₹10,000/-	₹10,000/-
5.	Loss of Income	₹59,616/-	₹1,01,760/-
5.	Loss of	₹2,20,580/-	₹1,62,500/-

	Prospective Income		
6.	Pain & Suffering, Curtailment of Enjoyment of Life	₹2,50,000/-	₹2,50,000/-
7.	Future Medical Expenses	₹25,000/-	₹25,000/-
8.	Loss of Earning Capacity	-	₹3,60,750/-
	Total	₹7,06,916/-	₹10,51,730/-

14. The overall compensation is enhanced from ₹7,06,916/- to ₹10,51,730/- which shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment. The enhanced compensation along with interest shall be deposited by the Respondent Insurance Company in UCO Bank, Delhi High Court Branch in the Appellant's name which shall be held in Fixed Deposit for a period of five years.

15. The Appeal is allowed in above terms.

CM. APPL No.7330/2012(for release of amount)

16. This application has been moved by the Appellant for release of the amount of ₹4,13,722/- kept in the Fixed Deposit for a period of five years which is to mature on 25th July, 2015. It is urged that marriage of Ms. Ruksar Parveen, daughter of the Appellant is going to be held on 26.04.2012. An amount of ₹2,50,000/- shall be released to the Appellant out of the said

Fixed Deposit. Rest of the amount shall be kept in the Fixed Deposit which will mature on 20.07.2015.

17. The application stands disposed of.

(G.P. MITTAL)
JUDGE

APRIL 24, 2012
pst