

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

Date of decision: 27th August, 2012

+ **MAC. APP. 815/2010**

HARMOHINDER SINGH Appellant
Through: Mr. Bhupesh Narula, Adv.

versus

MANGLA PRASAD & ORS. Respondents
Through: Mr. S.M. Chopra, Adv for R-1 & R-2.
Mr. Punit Vinay Adv. for
Mr. Abhishek Kumar 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 ₹18,05,400/- awarded in favour of the Appellant for having suffered injuries in a motor vehicle accident which occurred on 10.02.2009.
2. On 10.02.209 at about 4:00 P.M. the Appellant was proceeding from Ghaziabad to Delhi on his two wheeler No.UP-14Z-8424. His wife was a pillion rider. When they reached near Mohan Nagar, a truck No.HR-55B-8274 driven by the First Respondent in a rash and negligent manner collided against the two wheeler. As a result of the forceful impact the Appellant fell down; both of his legs were run over by the truck.
3. He was admitted in Narender Mohan Hospital and Heart Centre, Ghaziabad. On account of the crush injury, amputation of both legs below knee was carried out as an emergency procedure. He also suffered

urethra injury. He suffered permanent disability to the extent of 100% qua his entire body as per the Disability Certificate Ex.PW-1/M.

4. The Appellant claimed that he was working as a Commission Agent with M/s. Sunny Collection, Ghaziabad, U.P. and was earning ₹10,000/- per month. He placed on record his ITRs for the Assessment Year (AY) 2006-07, AY 2007-08 and AY 2008-09. The last ITR showed his income to be ₹1,06,489/-.
5. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of the offending vehicle by the first Respondent. The compensation of ₹18,05,400/- awarded in favour of the Appellant is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Medicines and Medical Treatment	₹1,55,400/-
2.	Loss of Earning Capacity due to Disability	₹ 10,45,000/-
3.	Attendant Charges	₹ 10,000/-
4.	Purchase of Artificial Limb	₹ 4,00,000/-
5.	Loss of Amenities of Life	₹ 1,00,000/-
6.	Pain and Suffering	₹ 60,000/-
7.	Conveyance & Special Diet	₹ 35,000/-
	Total	₹ 18,05,400/-

6. In the absence of any Appeal by the driver, owner or the insurer, the finding on negligence has attained finality.
7. The following contentions are raised on behalf of the Appellant:-

- (i) The Claims Tribunal erred in accepting the Appellant's income as ₹95,000/- per annum. Although, there was specific evidence in the form of ITR Ex.PW-1/J for the AY 2008-09 showing his income to be ₹1,06,489/-. He should have been awarded compensation on the basis of his actual income.
 - (ii) The compensation awarded towards Attendant Charges, Conveyance and Special Diet, Pain and Suffering and Loss of Amenities in Life are on the lower side.
8. On the other hand, learned counsel for the Respondent Insurance Company supports the judgment and urges that the compensation awarded is just and reasonable.
9. 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.

10. In *Arvind Kumar Mishra v. New India Assurance Company Limited*, (2010) 10 SCC 254, the Supreme Court dealt with the case of disability of an engineering student. The Supreme Court observed that while awarding compensation in personal injury cases, an attempt should be made to put the injured in the same position as he was as far as money is concerned. In para 9 of the report, the Supreme Court held as under:

“9. We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was insofar as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered.”

11. In *Nizam’s Institute of Medical Sciences v. Prasanth S. Dhananka & Ors.*, (2009) 6 SCC 1, the Supreme Court emphasized that cases of serious injuries in motor vehicle accident are worse than the death cases because the victim and his family suffers throughout life. Para 90 of the report is extracted hereunder:-

“90. At the same time we often find that a person injured in an accident leaves his family in greater distress vis-à-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is,

however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity.”

12. In *Kavita v. Deepak & Ors.*, Civil Appeal No.5945/2012 decided on 22.08.2012, the Supreme Court laid down that an attempt should always be made to award adequate compensation not only for physical injury and treatment but also for the loss of earning and inability to lead a normal life and enjoy the amenities, which would have been enjoyed but for the disability caused due to the accident.
13. In *Raj Kumar* the Supreme Court reiterated the heads under which compensation is awarded in personal injury cases as under:-

“Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses. Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.”

14. Now, I turn to the facts of this case.

LOSS OF INCOME

15. The Claims Tribunal accepted that the Appellant returned income of ₹96,360/-, ₹97,540/- and ₹1,06,489/- for the AY 2006-07, 2007-08 and 2008-09. The Claims Tribunal observed that the Appellant's income was fluctuating and therefore, preferred to award the compensation taking the Appellant's income at ₹95,000/- per annum.
16. The Claims Tribunal's conclusion that the Appellant's income was fluctuating is unfounded. Rather the record reveals that the Appellant's income was gradually increasing. Obviously, the Appellant was aged 52 years thus, he was not entitled to any future prospects but there was no conceivable reason to deny him compensation on the basis of his proved income on the date of the accident.
17. Indisputably, the Appellant suffered amputation of both of his legs resulting into 100% disability qua his entire body. He was working as a Commission Agent. He was unable to carry out this job or any other job. Thus, he was entitled to the compensation for loss of 100% earning capacity as was granted by the Claims Tribunal. Thus, I award him a compensation of ₹11,71,280/- (1,06,480/- x 11) towards loss of future earning capacity as against an award of ₹10,45,000/-.

CONVEYANCE CHARGE AND SPECIAL DIET

18. The Claims Tribunal awarded a consolidated sum of ₹35,000/- towards conveyance and special diet. On account of the Appellant's amputation of both of his legs, he would be unable to move at all in any public transport. Thus, he would always need to use a taxi/TSR to attend to the doctor or to attend to his social commitments. Thus, I would award him a compensation of ₹1,32,000/- (₹ 1000/- x 12 x 11) towards conveyance charges from the period of his treatment and till he survives.
19. The Appellant suffered amputation of both of his legs on account of crush injury and urethra injury. As stated earlier, a consolidated sum of ₹35,000/- was awarded towards special diet and conveyance. I have already awarded a sum of ₹1,32,000/- towards conveyance charges. The Appellant definitely needed special diet to recover from the injuries. I, therefore, make a separate provision of ₹15,000/- towards special diet.

ATTENDANT CHARGES

20. It is urged by the learned counsel for the Appellant that the Appellant would always need an Attendant to carry out his day to day activities. He submits that compensation @ ₹2,000/- per month should be granted to the Appellant.
21. As stated earlier, the Appellant has been granted full compensation towards loss of his earning capacity. Largely, he has to remain confined to home. The Claims Tribunal separately awarded him compensation for purchase of an artificial limb. The Appellant may be able to move inside his home with the artificial limb. Still, he may need some help which may

be rendered by some or the other family members. The compensation of ₹10,000/- awarded towards Attendant charges is on the lower side.

22. 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 award a lumpsum compensation of ₹50,000/- towards Attendant charges as against a sum of ₹10,000/- awarded by the Claims Tribunal.

NON-PECUNIARY DAMAGES

23. The learned counsel for the Appellant urges that compensation of ₹1,00,000/- awarded towards loss of amenities in life and ₹60,000/- towards pain and suffering is on the lower side. The learned counsel places reliance on *Kavita (supra)* where a compensation of ₹3 lacs was awarded towards pain and suffering and ₹3 lacs towards loss of amenities in life.
24. In *Kavita (supra)* the victim became paraplegic on account of the injuries suffered. In this case, the Appellant suffered amputation of both of his legs below knee.
25. There cannot be any discrimination between rich and the poor while awarding compensation towards non-pecuniary damages. Yet, each case has to be adjudged to find out the good things of life taken away from the victim (loss of amenities) and infliction of unpleasant things.
26. 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.

27. In case of *Govind Yadav v. New India Insurance Co. Ltd. (2011) 10 SCC 683*, where a victim aged about 24 years suffered amputation of one leg above knee, a compensation of ₹1.5 lacs was awarded towards pain and suffering and another sum of ₹1.5 lacs was awarded towards loss of amenities in life and loss of marriage prospects.
28. In the instant case, the Appellant is a married person aged about 52 years. Of course, he has suffered amputation of both of his legs below knee. Considering the facts and circumstances of this case, I would award a compensation of ₹1,50,000/- towards pain and suffering and ₹2,00,000/- towards loss of amenities in life and disfigurement.
29. The compensation awarded by the Claims Tribunal under rest of the heads is maintained.
30. The compensation awarded is recomputed as under:-

Sl. No.	Compensation under various heads	Awarded by this Court
1.	Medicines and Medical Treatment	₹1,55,400/-
2.	Loss of Earning Capacity	₹ 11,71,280/-

3.	Attendant Charges	₹ 50,000/-
4.	Purchase of Artificial Limb	₹ 4,00,000/-
5.	Loss of Amenities in Life & Disfigurement	₹ 2,00,000/-
6.	Pain and Suffering	₹ 1,50,000/-
7.	Conveyance	₹ 1,32,000/-
8.	Special Diet	₹ 15,000/-
	Total	₹ 22,73,680/-

31. The compensation is enhanced from ₹18,05,400/- to ₹22,73,680/-
32. The enhanced compensation of ₹4,68,280/- shall carry interest @ 7.5% per annum from the date of filing of the petition till its deposit.
33. Respondent No.3 New India Assurance Company Limited is directed to deposit the enhanced compensation along with interest in the name of the Appellant in the UCO Bank, Delhi High Court Branch, New Delhi within six weeks.
34. Eighty percent of the enhanced compensation along with interest shall be held in fixed deposit in favour of the Appellant for a period of two years, four years and six years in equal proportion. Rest 20% shall be released on deposit.
35. The Appeal is allowed in above terms.
36. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

AUGUST 27, 2012/vk