

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

Date of decision: 27th August, 2012

+ **MAC.APP. 615/2008**

NEW INDIA ASSURANCE COMPANY LTD..... Appellant
Through: Mr. D.K.Sharma, Adv.

versus

SOHANVEER SINGH & ORS Respondent
Through: Mr. O.P. Mannie, Adv. for R-1.

+ **MAC.APP. 23/2009**

SHRI SOHANVEER SINGH Appellant
Through: Mr. O.P. Mannie, Adv.

versus

SHRI VIKRAM SINGH & ORS. Respondent
Through: Mr. D.K. Sharma, 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. These two Appeals arise out of a common judgment dated 09.09.2008 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹12,46,233/- was awarded in favour of Sohan Veer Singh for having suffered injuries resulting into amputation of left leg above knee and fracture on the right leg in a motor vehicle accident which took place on 06.07.2006

2. For the sake of convenience Appellant in MAC APP. 615/2008 shall be referred to as to the Insurance Company and the Appellant in MAC APP. 23/2009 shall be referred to as the Claimant.
3. The finding on negligence is not challenged by the Appellant Insurance Company thus, the same has attained finality.
4. In a Claim Petition filed under Section 166 of the Motor Vehicles Act, 1988 (the Act) it was claimed that on 06.07.2006 the Claimant was driving his motorcycle No.DL-7S-AK-0877 at normal speed observing all the traffic rules. The Claimant had stopped his two wheeler on the left side of the Qualis No.DL-1CG-6722, in the meanwhile a truck No.HR-46B-1998 being driven in a rash and negligent manner by Respondent Vikram Singh came from Madhuban Chowk side and hit the Qualis. Thereafter, Respondent Vikram Singh (the driver) reversed the truck in order to flee from the spot. He (the driver) hit a Vikram tempo No.DL-1LF-5574 and then the Claimant's two wheeler.
5. The Claimant was removed to Springdales Hospital where he remained admitted from 06.07.2006 to 18.07.2006. Amputation of left leg above knee was done whereas POP cast was put on the right leg. The Claimant was advised bedrest from time to time upto January, 2007.
6. The Claimant claimed that he was working as a Professional Photographer and was earning ₹7,000/- per month. The Claims Tribunal declined to believe the Claimant's income to be ₹7,000/- and thus awarded compensation on the basis of income of a matriculate (as per the Claimant's qualification).
7. The compensation awarded is tabulated hereunder:

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Compensation for Pain and Injury	₹25,000/-
2.	Compensation for Medical Treatment	₹ 1,51,822/-
3.	Compensation for the Loss of Future Income	₹ 9,10,411/-
4.	Compensation on Artificial Limb	₹ 1,44,000/-
5.	Compensation for Conveyance, Special Diet & Attendant Charges	₹ 15,000/-
	Total	₹ 12,46,233-

8. It is urged by the learned counsel for the Appellant Insurance Company that:-
- (i) The Claimant suffered 80% disability on account of amputation of left leg in respect of left lower limb. The Claims Tribunal erred in treating the disability vis-à-vis the whole body.
 - (ii) The compensation awarded towards loss of future earning capacity is exorbitant and excessive.
 - (iii) The Appellant Insurance Company successfully proved the breach of the terms of the policy as the offending vehicle was being driven in the National Capital Territory of Delhi without a valid permit. The Claims Tribunal ought to have exonerated the Insurance Company instead of making it liable to pay the compensation with a right to recover from the owner of the vehicle.

9. On the other hand, learned counsel for the Claimant makes the following submissions:-
- (i) It was not disputed that the Claimant was working as a Photographer. He should have been awarded loss of earning capacity on an income of ₹7,000/- which was just and reasonable.
 - (ii) The Claimant was a young boy of 25 years; an addition of 50% should have been made towards future prospects.
 - (iii) The compensation awarded towards non-pecuniary heads was wholly insufficient. He should have been awarded a compensation of ₹1.5 lacs each towards pain and suffering and loss of amenities. Reliance is placed on *Govind Yadav v. New India Insurance Co. Ltd. (2011) 10 SCC 683*.
 - (iv) The Claimant has not been granted any interest on the awarded amount from the date of filing of the Petition.
10. Section 166 of the Motor Vehicles Act, 1988(the Act) enjoins payment of 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.”*
11. 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.”

12. 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.”

Loss of Earning Capacity

13. The Claimant during evidence before the Claims Tribunal filed his Affidavit Ex.PW-1/A. He testified that at the time of the accident he was working as a professional Photographer. He was an expert in making video film for functions. He was earning Rs.7,000/- per month. The Claimant was cross-examined but his profession as a Photographer was not disputed. The Claimant admitted that he did not have any documentary evidence with regard to his income. Since the Appellant Insurance Company did not dispute that the Claimant was a professional Photographer and this accident took place in the year 2006, it would be reasonable to accept the Claimant's income to be ₹7,000/- per month.
14. The vital question for consideration is what was the loss of the Claimant's earning capacity. Obviously, on account of amputation of his left leg the Claimant would be handicapped in moving from one place to another and making videos at different locations. But, at the same time he could carry out the work from the studio and engage another person whenever the work at a location outside is to be carried out. In the circumstances, I would take the loss of earning capacity to be 40% vis-à-vis the whole body.
15. In the absence of any evidence with regard to the future prospects, the Claimant was entitled to an increase of 30% towards the inflation on the basis of judgment of the Supreme Court in *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559, relied on and discussed by this Court in *Rakhi v. Satish Kumar & Ors.* (MAC. APP. 390/2011) decided on 16.07.2012.

16. The compensation payable towards loss of earning capacity would come to ₹7,42,560/- (7000/- + 30% x 12 x 17 x 40%).

LOSS OF INCOME

17. It was proved on record that the Claimant was advised bed rest from time to time. Last such rest was advised on 23.12.2006 for a period of one month. Thus, it is proved that the Claimant was unable to attend to his work at all for a period of six months. He is entitled to a sum of ₹42,000/- (7,000/- x 6) towards loss of income for six months.
18. At the time of the accident the Claimant was a young unmarried boy of 25 years. Apart from other injuries, he suffered amputation of left leg above knee. The Claimant's case can be compared with *Govind Yadav* where a compensation of ₹1.5 lacs was awarded towards pain and suffering and ₹1.5 lacs towards loss of amenities and loss of marriage prospects. Thus, I would enhance the compensation awarded towards pain and suffering from ₹25,000/- to ₹1,50,000/-
19. No compensation has been awarded towards loss of amenities in life and loss of marriage prospects. I make a provision for ₹1,50,000/- under this head also.
20. The overall compensation is recomputed as under:-

Sl. No.	Compensation under various heads	Awarded by this Court
1.	Loss of Earning Capacity	₹7,42,560/-
2.	Loss of Income	₹42,000/-

3.	Pain and Suffering	₹1,50,000/-
4.	Loss of Amenities in Life /Marriage Prospects	₹1,50,000/-
5.	Compensation for Medical Treatment	₹ 1,51,822/-
6.	Compensation on Artificial Limb	₹ 1,44,000/-
7.	Compensation for Conveyance, Special Diet & Attendant Charges	₹ 15,000/-
	Total	₹ 13,95,382/-

21. The overall compensation thus comes to ₹13,95,382/-.

INTEREST

22. Award of interest is a compensation for delayed payment. Simply because the compensation payable was held to be ₹12,46,233/- it was not a ground to deny interest to the Claimant. Moreover, the compensation is awarded assuming the victim's income as on the date of the accident. I see no reason to deprive the Claimant of the interest from the date of filing of the Petition. Thus, I hold that the Claimant is entitled to an interest @ 7.5% per annum from the date of filing of the Petition till the date of its payment.

23. The compensation stands enhanced by ₹1,49,149/- which shall carry interest @ 7.5% per annum from the date of filing of the Petition till the date of award.

24. The enhanced compensation along with interest and the interest on the awarded amount of ₹12,46,233/- from the date of filing of the Petition till its deposit in the Court at the rate as stated earlier, shall be deposited in

the name of the Claimant in UCO Bank, Delhi High Court Branch, New Delhi within six weeks.

25. It appears that 75% of the compensation awarded by the Claims Tribunal has already been released to the Claimant, rest 25% shall be released in terms of the order passed by the Claims Tribunal. Eighty percent of the enhanced compensation shall be held in fixed deposit for a period of two years, four years, six years, eight years and ten years in equal proportion. Twenty percent shall be released on deposit.

LIABILITY

26. Coming to the question of liability, the Appellant Insurance Company served a notice under Order XII Rule 8 CPC Ex.R3W1/1 upon the driver and the owner to produce the driving licence valid for driving the truck, route permit and copy of the Insurance policy. The documents were not produced. The Claims Tribunal thus while making the Insurance Company liable to pay the compensation granted it recovery rights against the Respondent No.2 Rajesh (the owner of the vehicle). The said finding is not challenged by the owner of the vehicle.
27. The enhanced compensation, therefore, shall also be recoverable by the Appellant Insurance Company from the owner of the vehicle after satisfying the award in execution of this very judgment.
28. Both the Appeals are disposed of in above terms.
29. The statutory deposit of ₹25,000/-, if any, shall be refunded to the Appellant Insurance Company.

30. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

AUGUST 27, 2012

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