

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

Date of decision: 21st September, 2012

+ **MAC.APP. 880/2010**

BHARTI TAANK Appellant
Through: Mr. Ashok Popli, Adv.

versus

MANISH SHARMA & ORS. Respondents
Through: Ms. Suman Bagga, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. Bharti Taank, who was an Engineering student seeks enhancement of compensation of ₹7,33,968/- awarded in her favour for having suffered injuries in a motor vehicle accident which occurred on 03.07.2009.
2. On the fateful day, while the Appellant was crossing the Najafgarh road near Rajouri Garden, Metro Station, she was hit by a speeding Santro car No.DL-2C-AD-7458. She was removed to Sir Ganga Ram Hospital where she remained admitted for nine days. She was discharged on 13.07.2009. Apart from the head injuries, the Appellant was found to have suffered fracture mandible, fracture pelvis, Lefort III and Lefort II fractures, bilateral orbital floor blowout fracture, depressed frontonasal, fracture and multiple facial lacerations.

3. During the time of her admission in Sir Ganga Ram Hospital ORIF of multiple facial fractures with reconstruction of bilateral orbital floor was done on 06.07.2009. She was again admitted in the hospital for one day on 15.09.2009 and a procedure for arch bar removal was done.
4. At the time of her accident, the Appellant was a young girl of 19 years. She was pursuing her B.Tech from Bhagwan Parsuram Institute of Technology and was a student of First Semester. The Appellant in her Affidavit Ex.PW-1/A testified that even after her discharge from the hospital she was an OPD patient in Sir Ganga Ram Hospital and Pt. Deen Dayal Upadhyay Hospital for Physically Handicapped. Since she had suffered fracture of mandible and facial injuries, she also consulted Dr. Dinesh Malhotra of Dental & Orthodontic Clinic. She testified that Dr. Malhotra conducted bone grafting followed by three implants, followed by five unit ceramic bridge with upper anterior region. She remained under treatment of Dr. Dinesh Malhotra from December, 2009 to July, 2010. She deposed that she remained under treatment with Dr. Rakesh K. Khazanchi, Senior Consultant Plastic and Cosmetic Surgery. She proved various bills, prescriptions and estimate for future treatments as Exs. PW-1/1 to PW-1/11.
5. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of the Santro Car by the First Respondent.
6. The finding on negligence is not challenged by the driver, owner or the Insurer of the offending vehicle.

7. The Claims Tribunal awarded a compensation of ₹7,33,968/- which is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Compensation for Medical Expenses	₹5,13,968/-
2.	Compensation for Conveyance Charge	₹ 20,000/-
3.	Compensation for Special Diet Expenses	₹ 20,000/-
4.	Compensation for Loss of Studies	₹ 50,000/-
5.	Compensation for Pain and Suffering & Loss of Amenities of Life	₹ 30,000/-
6.	Compensation for Future Treatment Expenses	₹1,00,000/-
	Total	₹ 7,33,968/-

8. The following contentions are raised by the learned counsel for the Appellant:-
- The compensation of ₹1,00,000/- awarded towards future treatment is very meagre. In view of the documentary evidence, the Appellant was required to spend ₹6,00,000/- to ₹7,00,000/- on her future treatment.
 - The compensation awarded towards pain and suffering and towards loss of amenities is very low.
 - No compensation was awarded towards disfigurement and loss of marriage prospects.

9. Section 168 of the Motor Vehicles Act, 1988 (the Act) enjoins a Claims Tribunal to determine the amount of compensation which is just and reasonable.

10. 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. From the Discharge Summary Ex.PW-1/1 of Sir Ganga Ram Hospital it is proved that the Appellant was admitted in the Hospital with the history of

bleeding from the nose, mouth and head. She was vomiting. There were multiple facial injuries with pain in lip and facial fractures. She underwent various procedures and surgeries during her admission in Sir Ganga Ram Hospital as is evident from the Discharge Summary Exs.PW-1/1 and PW-1/2. The certificate Ex.PW-1/7 proves that the Appellant would require change of bridge and reinforcement of implant every five years. The estimated cost of the implant and bone grafting etc. was given to be ₹47,500/- to ₹ 57,500/-. By the certificate Ex.PW-1/10 dated 20.07.2010, the Appellant was advised corrective surgery. The certificate Ex.PW-1/10 is extracted hereunder:-

“This is to certify that Ms. Bharti Taank, Age 19 Y/F, was admitted under my care for extensive facial injuries and pan facial fracture at Sir Ganga Ram Hospital. She is now on my follow-up treatment and having following problems, which are sequelae of her facial injuries

- 1. Widening of nasal base and flattening of the tip.*
- 2. Buldge of over both zygomatic regions.*
- 3. Hypertrophic scar right chin and right arm.*

For these problems she is advised further corrective surgery. Total estimated expenses are R.1,10,000/- (₹ 1 Lac 10 thousand only) approximately.

*Dr. Rakesh K. Khazanchi
Director
Dept. of Plastic, Aesthetic and Reconstructive Surgery
Medanta The Medicity
Gurgaon.”*

13. The Appellant’s testimony that she would require change of bridge and reinforcement of implant every five years and that she further needed corrective surgery was not challenged in cross-examination. The documents Exs.PW-1/7 to PW-1/10 remained unchallenged. In the

circumstances, I would award the Appellant a sum of ₹1,10,000/- for corrective surgery as per the certificate Ex.PW-/11 and a sum of ₹3,00,000/- for six procedures of change of bridge and reinforcement of implant every five years, that is, ₹50,000/- for each time which would amount to ₹3,00,000/-. Thus the compensation of ₹1,00,000/- awarded by the Claims Tribunal towards future treatment is enhanced to ₹4,10,000/-.

14. The Appellant remained admitted in Sir Ganga Ram Hospital from 4th July, 2009 to 13th July, 2009 and then on 15.09.2009. The Appellant remained under treatment of Dr. Rakesh K. Khazanchi, Dr. S.C. Bharija, Dr. Amit Khosla and Dr. S.P. Mandal of Sir Ganga Ram Hospital and Dr. Dinesh Malhotra, Surgeon and Orthodontist. The treatment of the Appellant was continued in September, 2009. She had further been advised corrective surgeries and after every five years she requires change of bridge and reinforcement of implant.
15. 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.
16. The Claims Tribunal awarded a total sum of ₹30,000/- towards pain and suffering and loss of amenities of life, which is wholly insufficient. In the

circumstances of the case, particularly keeping in view that the Appellant has to undergo change of bridge and reinforcement of implant every five years, I would increase the compensation towards pain and suffering to ₹75,000/- and would separately award a compensation of ₹25,000/- towards loss of amenities in life.

17. It is urged that the compensation of ₹50,000/- awarded towards loss of studies is on the lower side. The Appellant could not take three examinations in the First Semester which she stated she would take along with Fourth Semester examinations. The compensation of ₹50,000/- awarded towards the loss of studies, in the circumstances, was just and reasonable.
18. It is contended by the learned counsel for the Appellant that the Appellant suffered facial injuries including the fracture of mandible. She ought to have been granted some compensation as on account of facial injuries, her marriage prospects would diminish. While dealing with this aspect, the Claims Tribunal held as under:-

“18..... As per, Ex.PW1/2, the discharge summary of petitioner at Sir Ganga Ram Hospital, she was admitted on 15/09/09 for a day and her operation for Arch bar removal was done. There is no cogent evidence on record for physical disfigurement of petitioner causing any loss of marriage prospects.”

19. Since the Appellant got treatment from the best of the doctors and in the absence of any specific evidence that there is any big scar on the face, the Claims Tribunal rightly declined to award compensation towards diminished marriage prospects.
20. The compensation awarded is re-computed as under:-

Sl. No.	Compensation under various heads	Awarded by this Court
1.	Future Treatment Expenses	₹4,10,000/-
2.	Pain and Suffering	₹75,000/-
3.	Loss of Amenities in Life	₹25,000/-
4.	Loss of Studies	₹ 50,000/-
5.	Compensation for Medical Expenses	₹5,13,968/-
6.	Compensation for Conveyance Charge	₹ 20,000/-
7.	Compensation for Special Diet Expenses	₹ 20,000/-
	Total	₹ 11,13,968/-

21. In view of the above, the compensation is enhanced from ₹7,33,968/- to ₹ 11,13,968/-.
22. The enhanced compensation of ₹ 3,80,000/- shall carry interest @ 7.5% per annum from the date of filing of the Petition till its deposit.
23. Respondent No.2 ICICI Lombard General Insurance Company Limited is directed to deposit the enhanced compensation along with interest with the Claims Tribunal within six weeks.
24. Ninety percent of the enhanced compensation along with interest shall be held in fixed deposit in favour of the Appellant for a period of five years, ten years and fifteen years in equal proportion. Rest 10% shall be released on deposit.

25. The Appellant would be entitled to premature release of the enhanced compensation to the satisfaction of the Claims Tribunal, if the amount is needed for future treatment.
26. The Appeal is allowed in above terms.
27. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

SEPTEMBER 21, 2012

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