

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

+ FAO. NO. 618/2002

% Judgment reserved on: 25th April, 2013
Judgment delivered on: 21st May, 2013

PANKAJ GOEL Appellant
Through: Mr. Navneet Goyal and
Ms. Mamta Bhardwaj, Adv.

versus

DTC AND ANR. Respondents
Through: Mr. J.N. Aggarwal, Adv.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Instant appeal has been preferred for enhancement of the compensation amount against the impugned judgment dated 06.07.2002 passed by the Id. Tribunal, whereby compensation to the tune of Rs.2,08,400/- with interest @ 9% per annum from the date of filing of the petition till payment was awarded in favour of the appellant.

2. Ld. Counsel appearing on behalf of the appellant submitted that appellant claimed Rs.5,000/- per month as salary. However, Ld. Tribunal has assessed only Rs.2,000/- per month and accordingly compensation has been granted.

3. He further submitted that appellant had suffered 54% disability,

however, less amount was granted by the Tribunal qua the disability suffered by the appellant.

4. Also submits that appellant continued to take treatment about 3 years and the Id. Tribunal has granted very low amount qua the treatment. He further submitted that no compensation was awarded on account of loss of amenity, loss of enjoyment and loss of disfigurement.

5. Ld. Counsel argued that appellant is qualified B.Sc. (Civil Engineering) and was Managing Director in one Company and partner in another company. Therefore, he had a very bright future if disability did not occur due to the accident in question. Ld. Tribunal has granted compensation on account of loss of income on very lower side.

6. Brief facts of the case are that on 19.05.1985, appellant was going in his Car no. DIB-6535 with Sh. Vijay Kr. Aggarwal from his residence towards site of work at Rohtak Road. At about 11.25 a.m. when they reached near red light, Brar Square crossing, it was red signal, therefore the appellant stopped his car behind Jeep No. HRC-6926. Meanwhile, a DTC bus bearing no. DHP-2804 driven rashly and negligently by respondent no. 2 came from behind and strucked against the car of the appellant and one Jeep. The said bus dragged the car up to a distance of 40 Yds. and as a result of which said car was totally smashed and the appellant sustained multiple injuries.

7. Ld. Counsel for the appellant mainly argued on the amount of

compensation. For the said purpose Id. Tribunal has framed issue no. 2 as under:

“What amount of compensation petitioner is entitled to and from whom?”

8. On the issue mentioned above, Id. Tribunal has recorded that the appellant sustained injury in the said road accident because of rash and negligent driving of the bus driven by respondent no. 2. Admittedly, respondent no. 2 was driving the offending bus under the employment of respondent no.1.

9. The appellant stated in his statement that he sustained compound fracture and wound injury on his right arm, injury on the brachial artery and wound injuries all over his body. He was taken to Army Hospital, from where he was referred to Safdarjung Hospital on the same day and was admitted there w.e.f 19.05.1985 to 01.07.1985. Meanwhile, he was operated two times; firstly, on 19.05.1985, he was operated upon for setting the bone of right arm and for treating the brachial artery and nails were inserted for that purpose. His right arm was pulled off and muscles were torn and damaged. He was again operated on 11.06.1985 for skin grafting. He was also treated on 01.07.1985 and was referred to Orthopaedic Department. On 16.07.1985, a plaster was applied for six weeks and after six weeks it was changed for another four weeks and removed on 24.09.1985. On 18.10.1985, he was referred to Rehabilitation Department of Physiotherapy. He further stated that his arm became ugly and deformed and he was unable to bend and raise his hand and has no

gripping power in his right hand and movements of his right hand are restricted. Therefore, he cannot lift any weight. He cannot shave his beard with his right hand.

10. He further stated he was doing construction work under the name and style of M/s. Dynamic Estates and Builders Private Ltd. as Managing Director and as partner in the firm M/s. Dynamic Construction and Engineers. He has been an income tax payee prior to accident in question and could not work at all for three months. He further stated that if he had not met with an accident, he would have started earning Rs.50,000/- per month.

11. In the cross-examination, he stated that he has obtained claim of his car from insurance company on total loss basis. Also admitted that he got free treatment in Safdarjung Hospital and stated that he had to purchase medicines from the market.

12. The appellant placed on record various prescription slips issued by Dr. A.K. Kanwar as Ex.PW6/19 to PW6/23 and for various dates from 06.07.1985 to 16.07.1985. Ex.PW6/29 is the prescription slip issued by Dr. Arora on 17.12.1985 and various slips regarding the X-Ray and Laboratory Tests are also placed on record. Ex. PW4/1 is the photocopy of disability certificate dated 22.08.1989 issued by Medical board of Safdarjung Hospital to the appellant certifying that the appellant was a four years old case of right Brachial Plexus injury with fractures both bones forearm (right) with right Brachial artery tear. Residual Muscle Power (right) shoulder and elbow Grade, wrist and

hand grade '4', ROM (right) elbow-flexion up to 90° skin graft over volar aspect of right elbow and forearm Hyperaesthesia in C-5-6 dermatomes.

13. Ld. Counsel appearing on behalf of the appellant submitted that appellant has been one of the Directors of M/s Dynamic Estates and Building Pvt. Ltd. and as per Memorandum and Article of Association Ex.PW6/42 this company has entered into an agreement with M/s. Virat Cooperative Group Housing Society Ltd. and with M/s. Northern Cooperative Group Housing Society Ltd. for construction of various flats vide Ex.PW6/43 and Ex.PW6/44.

14. He further submitted that he had undergone 3 surgeries and ld. Tribunal has granted compensation on a very lower side.

15. On the other hand, ld. Counsel appearing on behalf of the respondent submits that appellant filed income tax return on 25.03.1988, whereas the said accident took place on 19.05.1985. The appellant also filed income tax return of the following assessment years showing his income as:-

<i>“Ex.P-6</i>	<i>1989-1990</i>	<i>Rs.30,220/-</i>
<i>Ex.P-5</i>	<i>1990-1991</i>	<i>Rs.25,980/-</i>
<i>Ex.P-4</i>	<i>1991-1992</i>	<i>Rs.28,180/-</i>
<i>Ex.P-2</i>	<i>1993-1994</i>	<i>Rs.42,240/-</i>
<i>Ex.P-1</i>	<i>1997-1998</i>	<i>Rs.1,66,276/-”</i>

16. Ld. Counsel further submitted that at the time of meeting with the accident in May, 1985, appellant was not the income tax payee and had filed the income tax returns for the assessment year 1985-1986

only on 25.03.1988 and for the assessment year 1986-1987 only in September, 1989. He passed B.Sc. (Civil Engineering) in 1980 from Delhi University vide Certificate Ex.PW15. Ld. Counsel further submitted that income of the appellant had been increasing mostly every year, even after accident, therefore, he is not entitled for any further increase and the ld. Tribunal has rightly granted compensation.

17. Ld. Counsel further submitted, the ld. Tribunal rather has granted the higher compensation by wrongly applying multiplier of 18 keeping in view the age of the appellant / injured as 27 years at the time of accident, in view of the dictum of *Sarla Verma v. DTC and Ors. 2009 (6) SCC 121*.

18. In rejoinder, Ld. Counsel for the appellant has argued that present case is of an injury and ld. Tribunal has wrongly deducted 1/3rd of the personal expenses, which is contrary to the settled law. The project work of the appellant and his partner could not be completed for the reasons they were injured in the said accident.

19. On this issue, Ld. Counsel for the respondent submitted that firstly appellant was the Managing Director of a company, if one of the Directors of a company sustain injury that does not mean that company will become paralysed because of him. Further, he was one of the partners and there is no proof produced by the appellant to establish that they had received some loss due to the said accident.

20. I note Ld. Tribunal has considered the claim of the appellant and observed as under:

“It is thus clear that at the time of meeting accident in May, 1985 the petitioner was not an income tax payee and he has filed the income tax return for the assessment year 1985-86 only 25.3.1988 and for the assessment year 1986-87 only in September, 1989. The petitioner had passed higher secondary examination in 1974 vide Ex.P-16 and his date of birth is mentioned as 06.05.1958 and the petitioner was thus aged about 27 years of age. He has also passed B.Sc.(Civil Engineering) in 1980 from Delhi University vide certificate Ex.P-15. It is argued on behalf of the respondents that the income of the petitioner had been on increase mostly every year and as such he is not entitled for any compensation on account of permanent disablement or loss of future earnings. However, there is no force in the arguments and if the petitioner had not become permanently disabled person by 54%, he would have earned more than what he has been earning after the accident in question. As such the petitioner is entitled to compensation for loss of his future earnings, permanent disablement, frustration and loss of enjoyment and amenities in life. As per the income tax return for the assessment year 1986-1987 relevant to the time of accident i.e. relevant to the financial year 1985-1986, the petitioner had shown his income as Rs.31,992/-. But this return of income tax was filed four years after the filing of the petition and there is likelihood of exaggeration of income. The petitioner has been B.Sc. (Civil Engineering). Now in the facts and circumstances of the case, I assess the income of the petitioner as Rs.2,000/- per month at the time of accident. The petitioner has admitted that he was given free treatment in Safdarjung Hospital. The petitioner having suffered said serious injures must have spent some amount on conveyance and consumed rich protein diet for his early recovery. The petitioner had also taken treatment from Private Doctor K. Kanwar as per said prescription slips and must have spent some amount in consulting the Doctor. The petitioner has not led any evidence about damage in his car. He admitted in his

cross-examination that he had received claim of car on total loss basis. So, he is not entitled for any compensation for his alleged loss in the said car. Now in the facts and circumstances of the case, it would meet the interest of justice if the following pecuniary damages are awarded to the petitioner:

(i) Amount spent on conveyance	-	Rs.5,000.00
(ii) Amount spent on special diet	-	Rs.5,000.00
(iii) Amount spent on purchase of medicines and X-rays	-	Rs.806.00
(iv) Amount paid to Private Doctor	-	Rs.2,000.00
(v) <u>Loss of earnings</u>	-	<u>Rs.10,000.00</u>
<u>Total</u>		<u>Rs.22,806.00</u>

Having suffered such serious injuries the petitioner must have undergone a lot of mental and physical agony and pain and it would meet the interest of justice if a further sum of Rs.30,000/- is awarded under this head. The petitioner has become permanently disabled by 54% vide certificate Ex.PW4/1, as such the petitioner is entitled for compensation for suffering permanent disability, loss of future earnings, frustration and loss of amenities and enjoyment in life. 54% of monthly income of Rs.2,000/- comes to Rs.1,080/- and after deducting one-third expenses of Rs.360/- the monthly loss comes to Rs.720/- and the annual loss comes to Rs.8,640/-. As per second schedule of Motor Vehicles Act, 1988, if a multiplier of 18 is applied the compensation under this head comes to Rs.1,55,520/-. The total amount of compensation thus comes to Rs.2,08,326/- rounded off to Rs.2,08,400/- which the petitioner is entitled to recover from the respondents jointly and severally. The petitioner would also be entitled to interest @ 9% p.a. from the date of filing of the petition till payment. Hence, this issue is decided accordingly.

RELIEF

As a sequel to my findings on the abovesaid issues, a sum of Rs.2,08,400/- is awarded to the petitioner against

respondent nos. 1 & 2 jointly and severally. The petitioner would also be entitled to interest @ 9% p.a. from the date of filing of the petition till payment. 85% of the awarded amount with proportionate interest be deposited in FDR in any of the Nationalized Banks for a period of seven years. The petitioner may opt for awarding of monthly / quarterly interest but will not be granted any loan against the said FDR. The awarded amount will be satisfied by respondent no. 1 within a period of 30 days.”

21. In ***Kavita v. Deepak and Ors. 2012ACJ2161***, Hon’ble Apex Court has held as under:

“In case of injury while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit upto the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk run or sit; (iii) damages for the loss of expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment frustration and mental stress in life.”

22. In the instant case injured/claimant is a qualified B.Sc. (Civil Engineer) and at the time of accident he was 27 years of age

enjoying good health. After perusal of the records, it appears that the injured was Director of M/S Dynamic Estate and Building Pvt. Ltd., and as per memorandum and article of association Ex.PW6/42 this company entered into an agreement with M/s. Virat Co-operative Group Housing Society Ltd., with M/s. Northern Co-operative Group Housing Society Ltd. for construction of various flats vide Ex.PW6/46 & Ex.PW6/44. Considering his age, exposure, qualification and year of accident, i.e., 1985 I hold the income of the injured at Rs.3,000/- per month.

23. On the issue of 1/3rd deduction towards personal expenses, in the case of ***Raj Kumar v. Ajay Kumar and Anr. 2011 (1) SCC 343*** Hon'ble Supreme Court has held as under:

“In the case of an injured claimant with a disability, what is calculated is the future loss of earning of the claimant, payable to claimant, (as contrasted from loss of dependency calculated in a fatal accident, where the dependent family members of the deceased are the claimants). Therefore there is no need to deduct one-third or any other percentage from out of the income, towards the personal and living expenses.”

24. Regarding the issue of multiplier of 18, in ***Sarla Verma (Supra)*** the Supreme Court held as under:

“We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40

years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years. In the instant case the age of the injured at the time of accident was 27 years, so the proper multiplier is 17.”

25. After considering the legal position on two issues as discussed above, the compensation towards loss of future income of the injured comes to Rs.3,30,480 ($3000 \times 12 \times 17 \times 54 / 100$).

26. Accordingly, loss of income during the period of treatment comes to Rs.15,000/- (3000×5).

27. When compensation is to be awarded for pain and suffering, the special circumstances of the claimant have to be taken into account including his age. There is no yardstick to measure the compensation for pain suffered by the injured. However, the pain and suffering of the petitioner in the present case cannot be measured in terms of money as suffering is going to be with him for his whole life. In the instant case Ld. Tribunal has awarded Rs.30,000/- towards pain and sufferings. Considering the facts and circumstances of the case I award Rs.50,000/- towards pain and sufferings.

28. I note, the Ld. Tribunal has not granted any compensation on account of loss of amenity, loss of enjoyment of life and loss of disfigurement. In the instant case injured was 27 years of age and he was unmarried. In *Kavita (Supra)* Supreme court has held as under:

“In determining the quantum of compensation payable to the victims of accident, who are disabled either

permanently or temporarily, efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and inability to lead a normal life and enjoy amenities, which would have been enjoyed but for the disability caused due to the accident. The amount awarded under the head of loss of earning capacity are distinct and do not overlap with the amount awarded for pain, suffering and loss of enjoyment of life or the amount awarded for medical expenses”.

29. Considering the facts and circumstances of the case, I award Rs.50,000/- under each head, i.e., Rs.1,50,000/-.

30. In view of above discussion and settled law, the compensation amount towards loss of future income is enhanced from Rs.1,55,520 to Rs.3,30,480 for loss of income during the period of treatment from Rs.10,000 to Rs.15,000 and for pain and suffering from Rs.30,000 to Rs.50,000. The total enhanced compensation including compensation for loss of amenity, loss of enjoyment of life and loss of disfigurement is Rs.3,49,960/- rounded off to Rs.3,50,000/-.

31. Respondents are directed to deposit the enhanced amount with UCO Bank, Delhi High Court Branch, New Delhi within a period of four weeks with interest @ 9% per annum from the date of filing of the appeal till realization of the amount; failing which the respondents shall be liable to pay interest @ 12% per annum on delayed payment.

SURESH KAIT, J

MAY 21, 2013/jg