

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

+ MAC.APP.110 OF 2006

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Reserved on : 5th April, 2013
Date of decision : 15th May, 2013

CHARANJEET SINGH Appellant
Through Ms. Anju Jain and Mr.Hitesh
Sachal, Advs.
versus

MAHAVIR SINGH AND ORS. Respondents
Through Mr. S.L. Gupta, Mr. Ram
Ashray, and Mr. Vikas
Chandra, Advs. for
respondent no.3

CORAM :-
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT

1. The appellant has challenged the award of the Claims Tribunal whereby the compensation of Rs.4,80,000/- has been awarded to him. The appellant seeks the enhancement of the awarded amount.
2. The accident dated 21st June, 2001 resulted in grievous injuries to the appellant. The appellant was returning from Hemkunt Sahib and Badrinath in Maruti Van No. DL-6C-E-9749. When the said vehicle reached near Modipuram Check Post, the driver lost control and hit against a stationary truck resulting in grievous injuries to the clavicle bone and multiple fractures on the

left hand and both legs. The appellant was initially taken to Sarvhit Hospital, Modipuram, Meerut. On 22nd June, 2001, the appellant was shifted to LNJP Hospital, Delhi where his left arm was amputated resulting in permanent disability of more than 50%. The disability certificate Ex.PW-1/10 was issued by LNJP Hospital. The appellant underwent the following treatment:

(a) On 19th September 2002, the appellant was admitted in L.N.J.P Hospital and was diagnosed for Crohn's disease [type of inflammatory bowel disease (IBD) resulting in swelling and dysfunction of the intestinal tract] and Enterocutaneous Fistula in RIF(Right Iliac Fossa refers to right-inferior part of the surface of the human abdomen) [a cutaneous fistula connecting the body surface and some parts of the intestine] [Fistula is an abnormal channel from a hollow body cavity to the surface or from one cavity to another]. He was discharged on 18th November 2002 (Ex. PW 1/16).

(b) On 4th December 2002, the appellant was again admitted in L.N.J.P Hospital for Crohn's disease and Enterocutaneous Fistula. (Ex. PW 1/ 17). He was discharged on 19th December 2002.

(c) On 13th February 2003, the appellant was again admitted in L.N.J.P Hospital for Ileo colic Crohn's disease with Enterocutaneous Fistula. He was discharged on 24th February 2003.

3. The Claims Tribunal awarded a sum of Rs.60,000/- towards loss of leave in lieu of loss of income for 3 months, Rs.20,000/- towards expenses on attendant and conveyance during treatment,

Rs.5,000 towards special diet, Rs.1,50,000/- towards future medical expenses including the artificial limb, Rs.20,000/- towards loss of marital happiness, Rs.50,000/- towards expenses to be incurred on driver and attendant, Rs.50,000/- towards pain and suffering, Rs.1,00,000/- towards permanent disability arising out of the amputation and Rs.25,000/- towards shortening of life span. The total compensation awarded to Rs.4, 80,000/-.

4. During the pendency of this appeal, the appellant sought permission to file additional evidence on the ground that the appellant made a claim for Rs.3,49,000/- before the Claims Tribunal towards the costs of the electronic artificial limb against which the amount of Rs.1,50,000/- was awarded by the Claims Tribunal due to which the appellant could not procure the electronic artificial limb and the cost of the same has now increased. Vide order dated 4th May, 2012, the appellant was permitted to lead the additional evidence to prove the increase in the cost of electronic artificial limb as well as the requirement of the electronic artificial limb, payments made to the driver and the attendant after the accident.

5. The appellant examined five witnesses before this Court. He himself appeared in the witness box as AW-1 and deposed that the cost of the artificial limb was initially Rs.3,49,000/- against which the Claims Tribunal awarded a sum of Rs.1,50,000/- and therefore, he could not procure the same. The appellant deposed that he could get reimbursement only upto the extent of Rs.4,500/- from his employer, Syndicate Bank. The appellant placed on record the

letter dated 30th September, 2011 of Syndicate Bank in this regard. The appellant also deposed that he employed Satpal as his driver in 1st July 2001 at a salary of Rs.5,000/- per month with Rs.100/- extra as night charges which was increased from time to time and at the time of making the statement, he was paying Rs.7,000/- per month with Rs.100/- extra as night charges. The payments made to the driver are Mark B-12 to B-23. The appellant also employed Yashpal as his attendant on 1st July 2001 and he was paying monthly salary of Rs.2,000/- which had been increased to Rs.3,100/-. The payments made to the attendant are Mark B-1 to B-11. The appellant also proved the prescription of LNJP Hospital towards the need to fit artificial electronic limb as Ex.AW4/1. The quotation dated 29.3.2012 for electronic artificial limb from Otto Bock Healthcare India Pvt. Ltd. is Ex.AW4/B.

6. The appellant examined Yashpal Jain, attendant as AW-2 who deposed that he was working with the appellant at a monthly salary of Rs.2,000/-. He joined the appellant on 1st July, 2001 at a salary of Rs.2,000/- which was increased from time to time and he was last drawing salary of Rs.3,100/- per month. The payments received by the witness are Mark B-1 to B-11.

7. The appellant examined Satpal Singh as AW-3 who deposed that he joined the appellant in 1st July 2001 as driver on a monthly salary of Rs.5,000/- per month with Rs.100/- extra as night charges which was increased from time to time and at the time of making the statement, he was getting Rs.7,000/- per month with Rs.100/-

extra as night charges. The payments received by the witness are Mark B-12 to B-23.

8. AW-4 – Rajiv Kumar from Otto Bock Healthcare India Pvt. Ltd. proved the quotation of myo-electric hand function Prostheist of Rs.7,20,000/- towards the costs of myo-electric hand function Prostheist as Ex.AW4/B.

9. Dr. V.K. Gautam, Director/Professor of Orthopedic Surgery LNJP Hospital deposed that the appellant was having an above elbow amputation and has advised prosthetic fitting. He deposed that the artificial device to replace is of two types; a purely cosmetic one; and a functional/myo-electrical prosthesis which provides a better function than the cosmetic one. He deposed that the artificial limb can be fixed even after 15 years of the amputation.

10. Learned counsel for the appellant has urged the following grounds at the time of hearing of this appeal:

- (i) The cost of the electronic artificial limb i.e. Rs.7,20,000/- be awarded to the appellant.
- (ii) The compensation be awarded towards the loss of amenities of life and disfiguration.
- (iii) The compensation be awarded towards the cost incurred by the appellant on keeping the driver and the attendant be enhanced.
- (iv) The rate of interest be enhanced from 7.5% to 9%.

11. Learned counsel for the appellant submitted that the learned Tribunal awarded Rs.4,80,000/- to the appellant out of which Rs.2,50,000/- has been directed to be kept in fixed deposit for a

period of ten years. Learned counsel further submitted that the appellant had claimed Rs.3, 49,000/- for electronic artificial limb against which the Claims Tribunal awarded a sum of Rs.1, 50,000/- only and therefore, the appellant could not procure the same. It is further submitted that the cost of the said electronic artificial limb has now increased to Rs.7, 20,000/- and the appellant has proved the quotation of Otto Bock Healthcare India Pvt. Ltd.

12. The appellant appeared before this Court on 5th April, 2013 and his condition was seen by the Court. He was without left arm which was amputated as back as on 22nd June 2001 and he required electronic artificial limb. The appellant was working as a Manager with Syndicate Bank but as per the terms of employment, his entitlement of reimbursement is only upto the extent of Rs.4, 500/- as deposed by him in the witness box and also by the confirmed by the Syndicate Bank in the letter dated 30th September, 2011. The cost of the electronic artificial limb originally was Rs.3, 49,000/- against which the Claims Tribunal awarded Rs.1,50,000/- and therefore, the appellant could not procure the electronic artificial limb. The cost of the electronic artificial limb has now escalated to Rs.7, 20,000/- as proved by the AW-4 from M/s. Otto Bock Healthcare India Pvt. Ltd. A sum of Rs.7, 20,000/- is awarded to the appellant towards the cost of the electronic artificial limb.

13. The appellant is unable to drive any vehicle due to amputation of the left arm and he employed a driver in July 2001 at a monthly salary of Rs.5,000/- per month which has now increased to Rs.7,000/- per month. The appellant also employed an attendant

in July 2001 at a monthly salary of Rs.2, 000/- per month which has now increased to Rs.3,100/-. The attendant Yashpal Jain and the driver Satpal Singh appeared in the witness box as AW-2 and AW-3 respectively and the payments received by them from the appellant are Mark B-1 to B-11 and Mark B-12 to B-23 respectively. The total salary paid by the appellant to the driver and to attendant during the period 1st July 2001 to 31st March, 2012 is Rs.11,51,000/- against which the Claims Tribunal has awarded a compensation of Rs.50,000/- which is grossly inadequate. The compensation of Rs.20,000/- awarded by the Claims Tribunal under the head of attendant and conveyance is treated under the head of conveyance only. A further sum of Rs. 11,01,000 is awarded to the appellant towards the salary of AW-2 and AW-3 for the period 1st July 2001 upto 31st March 2012. The appellant shall be entitled to total compensation of Rs.11,51,000/- (Rs.11,01,000/- plus Rs.50,000/- awarded by the Claims Tribunal). With respect to the future salary of AW-2 and AW-3, no further amount is warranted as the interest on the aforesaid amount of Rs.11,01,000/- would be sufficient to meet the future salaries of AW-2 and AW-3.

14. The Claims Tribunal has awarded Rs.50,000/- towards pain and suffering and Rs.1,00,000/- towards permanent disability. However, no compensation has been awarded to the appellant towards loss of amenities of life as well as disfiguration. In *Oriental Insurance Company Ltd. v. V.S. Vijay Kumar Mittal*, 2008 ACJ 1300, this Court has held that compensation of Rs.3,00,000/- has been consistently awarded by the Courts during the period

1985 to 1990 in respect of permanent disability of 50% and above arising out of the amputation. The relevant finding of this Court is reproduced hereunder.

“10. The possession of one's own body is the first and most valuable of all human rights and while awarding compensation for bodily injuries this primary element is to be kept in mind. Bodily injury is to be treated as a deprivation which entitles a claimant to damages. The amount of damages varies on account of gravity of bodily injury. Though it is impossible to equate money with human suffering, agony and personal deprivation, the Court and Tribunal should make an honest and serious attempt to award damages so far as money can compensate the loss. Regard must be given to the gravity and degree of deprivation as well as the degree of awareness of the deprivation. Damages awarded in personal injury cases must be substantial and not token damages.

11. The general principle which should govern the assessment of damages in personal injury cases is that the Court should award to injured person such a sum as will put him in the same position as he would have been in if he had not sustained the injuries.

12. Broadly speaking, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and non pecuniary 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.

13. Pecuniary loss may include the following:

- (i) Special damages or pre-trial pecuniary loss.
- (ii) Prospective loss of earnings and profits.
- (iii) Medicinal expenses.
- (iv) Cost of future care and other expenses.

14. Non pecuniary loss may include the following:

- (i) Pain and suffering.
- (ii) Damages for mental and physical shock.
- (iii) Loss of amenities of life which may include a variety of matters i.e. on account of injury the injured may not be able to walk, run or sit etc.
- (iv) Loss of expectation of life i.e. on account of injury normal longevity of the life of the person concerned is shortened.
- (v) Disfigurement.
- (vi) Discomfort or inconvenience, hardship, disappointment, frustration and mental stress in life.

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18. In order to properly appreciate the contentions advanced by the learned counsel for the appellant, I note the following judgments:-

(i) B.N.Kumar vs. D.T.C., 118 (2005) DLT 36.

In said case, injured sustained crush injuries on his right leg leading to its amputation above knee in a road accident on 5th November 1987. He suffered a permanent disability of 85%. Noting various judgments wherein Courts had awarded ₹3,00,000/- under the head non-pecuniary damages, a Single Judge of this Court awarded ₹75,000/- for 'pain and suffering' and ₹2,00,000/- for 'continuing disability suffered by him'. Thus, a total of ₹2,75,000/- was awarded under this head.

(ii) Fakkirappa vs. Yallawwa & Anr., 2004 ACJ 141

In said case, a minor male child sustained grievous injury in a road accident which occurred on 8.5.2000 resulting in amputation of his left leg below knee. Considering the gravity of injury suffered the injured, Division Bench of Karnataka High Court awarded following compensation under the head 'non-pecuniary damages':-

(i)	Pain and suffering	: ₹50,000/-
(ii)	Loss of amenities of life	: ₹1,00,000/-
(iii)	Loss of marriage prospects	: ₹50,000/-
(iv)	Damages for amputation of leg before knee	: ₹1,50,000/-
(v)	Loss of expectation of life	: ₹50,000/-
		Total : ₹4,00,000/-

(iii) K. Shankar v. Pallavan Transport Corporation, 2001 ACJ 488

In said case, injured sustained serious injuries on his right leg in an accident on 14.2.1989. His right leg was amputated and he suffered permanent disability of 80%. A learned Single Judge of Madras High Court awarded the following compensation under the head 'non-pecuniary damages'.

(i)	For permanent disability	: ₹80,000/-
(ii)	Pain and suffering	: ₹50,000/-
(iii)	Loss of expectation of life and proper marital alliance	: ₹50,000/-
(iv)	For mental agony	: ₹1,00,000/-
		Total : ₹2,80,000/-

(iv) M. Jaganathan v. Pallavan Transport Corporation, 1999 ACJ 366

In said case, injured aged 45 years sustained injuries in an accident on 21.6.1990. The injury sustained by

the injured resulted in the amputation of his left leg above the knee. Division Bench of Madras High Court awarded following compensation under the head 'non pecuniary damages':-

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| (i) | Pain and suffering | : ₹1,00,000/- |
| (ii) | Compensation for continuing permanent disability | : ₹2,00,000/- |
| (iii) | Mental agony, torture and Humiliation because of Amputation | : ₹75,000/- |

Total : ₹3,75,000/-

(v) Bhagwan Singh Meena v. Jai Kishan Tiwari, 1999 ACJ 1200

In said case, the injured sustained severe and serious injuries on account of the road accident. His right leg was amputated. A learned Single Judge of Rajasthan High Court awarded a compensation of ₹3,00,000/- under the head non-pecuniary damages.

(vi) Dr. Gop Ramchandani v. Onkar Singh & Ors., 1993 ACJ 577

In said case, in an accident which had occurred on 17.12.1985, injured sustained injuries because of which his left leg was amputated resulting in 50% permanent disability. A Single Judge of Rajasthan High Court awarded a compensation of ₹3,00,000/- under the head 'non pecuniary damages'.

Break-up of the compensation under the said head is as under:-

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|-------|--|---------------------------|
| (i) | Physical and mental agony | : ₹1,00,000/- |
| (ii) | Permanent disability | : ₹1,00,000/- |
| (iii) | Loss of social life and loss in profession | : ₹1,00,000/- |
| | | <u>Total: ₹3,00,000/-</u> |

(vii) Jitendra Singh v. Islam, 1998 ACJ 1301

In said case, in an accident which had occurred on

14.02.1992, injured sustained injuries because of which his left leg was amputated resulting in 55% permanent disability. A Single Judge of Rajasthan High Court awarded a compensation of ₹3,00,000/- under the head 'non pecuniary damages'.

(viii) *Iranna v. Mohammadali Khadarsab Mulla & Anr.* 2004 ACJ 1396

In said case, on 19.4.2000, injured aged 7 years met with an accident. Due to the said accident, he sustained grievous injuries resulting in amputation of his left leg below knee. Tribunal awarded following compensation to him under the head 'non pecuniary damages':-

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|-------|--|---------------|
| (i) | Pain and suffering | : ₹50,000/- |
| (ii) | Loss of amenities, happiness, frustration | : ₹1,00,000/- |
| (iii) | Loss of marriage prospects | : ₹50,000/- |
| (iv) | Amputation of leg below knee and knee dis-articulation | : ₹1,50,000/- |

Total : ₹3,50,000/-

From the afore noted judicial decisions, a trend which emerges is that between the years 1985 to 1990, Courts have been awarding about ₹3,00,000/- under the head 'non pecuniary damages' for amputation of leg resulting in permanent disability of 50% and above.”

15. Following the aforesaid judgment, a sum of Rs.80,000/- is awarded towards loss of amenities and Rs.25,000/- is awarded towards disfiguration so that the total non-pecuniary compensation is Rs.3,00,000/- (Rs.50,000/- towards pain and suffering, Rs.1,00,000/- towards permanent disability, Rs.80,000/- towards loss of amenities of life, Rs.25,000/- towards disfiguration and Rs.

25,000 towards shortening of life span, Rs. 20,000/- towards loss of marital happiness).

16. The Claims Tribunal has awarded interest at the rate of 7.5% whereas the appropriate rate of interest in terms of the judgments of the Supreme Court in the case of *Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy*, AIR 2012 SC 100 and *Subulaxmi v. Tamil Nadu State Transport Corporation*, 2012 (10) SCALE 617 is 9%. Following the aforesaid judgments, the rate of interest is enhanced from 7.5% to 9%.

17. The appellant is entitled to total compensation of Rs.22,26,000/- as per break up given hereunder:

NON-PECUNIARY COMPENSATION

Compensation towards pain and suffering	Rs. 50,000/-
Compensation towards permanent disability	Rs. 1,00,000/-
Compensation for loss of amenities of life	Rs. 80,000/-
Compensation towards shortening of life span	Rs. 25,000/-
Compensation towards disfiguration	Rs. 25,000/-
Compensation towards loss of marital happiness	Rs. 20,000/-
Total non-pecuniary compensation	Rs. 3,00,000/-

PECUNIARY COMPENSATION

Loss of leave in lieu of loss of income for three months	Rs.30,000/-
Compensation towards salary of attendant and driver for the period 1 st July 2001 upto 31 st March 2012	Rs. 11,51,000
Compensation towards conveyance	Rs.20,000/-
Compensation towards special diet	Rs.5,000/-
Compensation towards electronic artificial limb	Rs.7,20,000/-
Total pecuniary compensation	Rs.19,26,000
Total compensation (Non-pecuniary)	Rs.22,26,000/-

Compensation of Rs.3,00,000/- and pecuniary compensation of Rs.19,26,000/-)	
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18. The appeal is allowed and the compensation is to the appellant is enhanced from Rs. 4,80,000 to Rs. 22,26,000 along with interest @ 9% per annum. With respect to the compensation of Rs.7,20,000/- for electronic artificial limb, the appellant shall not be entitled to any interest because the electronic artificial limb is yet to be installed. However, if the payment is not deposited within 30 days, the appellant shall be entitled to interest @ 9% per annum on Rs.7,20,000/- from the expiry of 30 days till realization. On the remaining amount of Rs.15,06,000 (Rs.22,26,000-Rs.7,20,000/-) the appellant shall be entitled to interest @ 9% per annum from the date of filing of the claim petition till realization.

19. The respondent no. 3 is directed to deposit the enhanced award amount with Syndicate Bank, Bahadur Shah Zafar Marg, New Delhi, by means of a cheque drawn in the name of Syndicate Bank A/c Charanjeet Singh within 30 days. Upon deposit of the aforesaid amount, Syndicate Bank is directed to release 10% of the said amount to the appellant by transferring the same to his saving bank account. The remaining amount be kept in the fixed deposit in the following manner:

(i) Fixed deposit for Rs.7,20,000/- in the name of Syndicate Bank, Bahadur Shah Zafar Marg, New Delhi initially for a period of two years. As and when the appellant gets the electronic artificial limb installed from Otto Bock Healthcare India Pvt. Ltd.,

the appellant shall write a letter to respondent no.3 confirming that he has got the artificial limb installed and he shall forward the original invoice to respondent no.3. The appellant shall thereafter meet the AGM of respondent no.3 who shall personally see the electronic artificial limb installed by the petitioner and shall confirm the same to Syndicate Bank on the original invoice whereupon Syndicate Bank shall release the payment of Rs.7,20,000/- to Otto Bock Healthcare India Pvt. Ltd. The interest on the fixed deposit earned by that time shall be transferred to the saving bank account of the appellant.

20. In the event of the appellant failing to install the electronic artificial limb within a period of two years, this amount of Rs.7,20,000/- along with interest thereon shall be refunded back by Syndicate Bank to respondent no.3.

21. The remaining amount (enhanced award amount minus 10% directed to be released and Rs.7, 20,000/- directed to be kept in fixed deposit) be kept in Fixed Deposit in the name of the appellant in the following manner:

- (i) Fixed deposit in respect of 20% for a period of one year.
- (ii) Fixed deposit in respect of 20% for a period of two years.
- (iii) Fixed deposit in respect of 20% for a period of three years.
- (iv) Fixed deposit in respect of 20% for a period of four years.
- (v) Fixed deposit in respect of 20% for a period of five years.

22. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of the beneficiary.

23. Withdrawal from the aforesaid account shall be permitted to the beneficiary after due verification and the Bank shall issue photo Identity Card to the beneficiary to facilitate identity.

24. The original fixed deposit receipts shall be retained by the Bank in the safe custody. However, the original Pass Book shall be given to the beneficiary along with the photocopy of the FDRs. Upon the expiry of the period of each FDR, the Bank shall automatically credit the maturity amount in the Savings Account of the beneficiary.

25. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.

26. Copy of this judgment be sent to the AGM, Syndicate Bank, Bahadur Shah Zafar Marg, New Delhi.

J.R. MIDHA, J

MAY 15, 2013