

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

+ **MAC.A. 418/2006**

% *Judgment reserved on: 14th May, 2013*
Judgment delivered on: 09 July, 2013

NARESH KUMAR Appellant
Through: Mr. S.N. Parashar, Adv.

versus

GURINDER JEET SINGH & ORS. Respondents
Through: Mr. Pradeep Gaur and
Mr. Amit Gaur, Advs. for R2.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

CM No.7040/2006(delay)

For the reasons enumerated in the application, the delay in filing the appeal is condoned.

Application stands disposed of.

MAC.A. 418/2006

1. Instant appeal has been preferred against the impugned award dated 11.11.2005 passed by the Id. Tribunal whereby an amount of Rs.7,45,615/- was awarded by the Id. Tribunal with interest @ 7.5% per annum from the date of filing of the petition till the date of

payment.

2. Counsel for the appellant has argued that vide the aforesaid impugned award, the Id. Tribunal has awarded only Rs.20,000/- for loss of amenities; and Rs.10,000/- for pain and sufferings. He submits that the appellant was having 65% disability on right leg due to which, the said leg was amputated.

3. Ld. Counsel further submitted that though he was working as a labourer, Id. Tribunal considered the functional disability of 100%, however not granted sufficient amount for loss of amenities, pain and sufferings.

4. Ld. Counsel further submitted that the accident took place in 2001 and the award was passed in 2005. He further submitted that at the time of accident, appellant was 22 years old and no amount was granted for disfigurement and loss of marriage prospects.

5. On the other hand, Id. Counsel appearing on behalf of the respondent insurance company submitted that the Disability Board assessed the disability of the appellant as 65% whereas Id. Tribunal has considered 100% functional disability, thus, the compensation granted to the appellant are on the higher side.

6. Ld. Counsel further submitted that monthly income of the appellant was considered as per the minimum wages applicable at the time of accident and keeping in view the age of the appellant 50% compensation towards future prospects was also granted.

7. He further submitted that Id. Tribunal has considered all aspects on higher side, therefore appellant is not entitled to get any compensation towards loss of amenities, pain and sufferings.

8. As regards the compensation for disfigurement and loss of marriage prospects, Id. Counsel has argued that Id. Tribunal has considered 100% disability, therefore, in these heads also, he is not entitled to get any compensation.

9. I have heard Id counsel for both the parties.

10. The appellant met with an accident at the age of 22 and sustained grievous injury which resulted into amputation of right leg above knee. Medical Board has examined and assessed the disability of the appellant. As per the certificate issued by the Medical Board the permanent disability has been ascertained as 65% in relation to right lower limb.

11. Importantly, the assessment of compensation in respect of permanent disability is based on the avocation or profession that had been carried out by the injured, prior to the accident. The aforesaid aspect is an important factor for assessing the functional disability. It is pertinent to note that the appellant was working as Hand Cart Puller. Rightly, in order to assess the functional disability, the Id Tribunal has considered the impact and effect of the disability on the earning capacity of the injured. Thus, the Id Tribunal has assessed the functional disability of the appellant as 100%. Accordingly, the Id Tribunal has passed an award on account of following heads:-

1.	Loss of future earnings	- Rs. 7,0,200/-
2.	Medical bills	- Rs 815/-
3.	Conveyance and special diet	- Rs. 5000/-
4.	Loss of amenities of life	- Rs. 20000/-
5.	Pain and sufferings	- Rs 10,000/-
	Total compensation	- Rs. 7 45 615/-

12. Appellant is seeking enhancement of compensation on account of loss of amenities of life, pain and suffering which falls under the head of non –pecuniary damages. Therefore, the sole point to be considered whether the appellant/injured is entitled to enhancement of compensation on account of non –pecuniary damages. The assessment of compensation on account of loss of amenities of life, pain and suffering is directly related to the assessment of compensation on account of loss in future earnings. In this context, it is significant to note the observations of the Apex Court in ***Raj Kumar Vs. Ajay Kumar (2011) 1 SCC 343:-***

“10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still

*effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not find suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. **It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear***

and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation.....”

13. I note, the functional disability has been assessed as 100%. Assessment of functional disability is a fundamental unit for computing the compensation on account of loss in future earnings. Therefore, the enhancement of compensation on account of non-pecuniary heads would lead to duplication in award amount; and it does not support the concept of ‘just’ compensation.

14. In view of above, I do not find any reason for enhancement of compensation on account of non- pecuniary heads.

15. Resultantly, the appeal is dismissed

16. No order as to costs.

CM NO.3166/2009(u/O 5 R-20)

Dismissed as infructuous.

SURESH KAIT, J

JULY 09, 2013

Jg/RS