

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

+ MAC.A. No. 126/2005

% Judgment delivered on: 23 January, 2014

MRS. YOGESH SURI Petitioner
Represented by: Mr. Vikas Jain, Adv.

Versus

ASHOK KUMAR AND ORS. Respondents
Represented by: Mr. R.N. Sharma, Adv.
for R3.
Mr. K.R. Pamei, Adv. for R6.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Instant appeal has been preferred against the award dated 18.10.2004, whereby Id. Tribunal has granted compensation for a sum of Rs. 1,96,400/- with interest @ 9% per annum from the date of filing of the petition till its realization.
2. The present appeal has been filed for enhancement of the award amount as noted above.
3. Ld. Counsel appearing on behalf of the appellant submitted that the appellant had produced medical bills for an amount of more than

Rs.2,00,000/-, however, ld. Tribunal granted only Rs.50,000/- towards the same.

4. He submitted that during the pendency of the instant appeal, AW1, Dr. Yatinder Kharbanda, Sr. Consultant (Orthopaedics) of Apollo Hospital has proved the bills dated 14.06.1996, 11.06.1996, 24.10.2996, 04.11.1996, 09.11.1996 for an amount of Rs.34,574/-, Rs.1,14,947/-, Rs.1,310/-, Rs.10,000/-, Rs.45,781/- and Rs.6,749.70/- respectively issued by Apollo Hospital, which have been proved as Ex.AW1/A1 to AW1/A6.

5. Ld. Counsel further submitted that AW2, Devanand Sharma, Dealing Clerk of Indraprastha Apollo Hospital, New Delhi has proved the documents / bills through the original record. Photocopy of the same are exhibited as AW2/A1 and AW2/A2.

6. The appellant had sustained injuries in the accident in question due to which she received disability of 45% in relation to upper limb, *vis-a-vis*, whole body as has been proved by disability certificate Ex.PW1/C.

7. Ld. Counsel further submitted that the appellant was doing the business of publishing which has been proved on record by placing the Income Tax Returns for the assessment year 1995-96 and 1996-97. However, after the accident, she closed down her business as she was not able to do the same.

8. Ld. Counsel submitted that ld. Tribunal ought to have considered the disability of 100% qua whole body and in any case not

less than 45% as assessed by the Disability Board.

9. The date of birth of the appellant is 12.01.1942 and the accident took place on 29.05.1996. Thus, on the date of accident, she was 54 and 4 months, however, below the age of 55 years. Therefore, the ld. Tribunal has wrongly applied the multiplier of 8, whereas in the present case, ld. Tribunal ought to have applied multiplier of 11.

10. Towards non-pecuniary benefits, ld. Tribunal has granted only Rs.20,000/- towards loss of amenities and Rs.40,000/- on account of pain and suffering which are on the lower side. However, not granted any compensation for special nutritious diet, attendant and conveyance charges.

11. The accident took place on 25.05.1996. Since then, the appellant has been taking treatment for the injuries received in the accident. Around 18 years have been passed and no amount was granted for future medical treatment.

12. On the other hand, ld. Counsel appearing on behalf of the respondent / insurance company submitted that as per medical certificate as discussed above, the appellant received 45% disability qua upper limb, however, not to the whole body. Therefore, ld. Tribunal has not assessed the functional disability for the reason that there is no affect on the avocation of the appellant, which she was having at the time of the accident.

13. He further submitted that since AW1 and AW2 as discussed above have proved the medical bills of the appellant, he fairly conceded that the said bills can be allowed in favour of the appellant.

14. Ld. Counsel has also fairly conceded that the age of the injured at the time of the accident was less than 55 years. However, ld. Tribunal erred in applying the multiplier of 8 instead of multiplier of 11. This court may consider accordingly.

15. I have heard ld. Counsels for the parties.

16. As per the permanent disability certificate, Ex.PW1/C, she had post traumatic deformity right hand with compromised hand function. Accordingly, her disability was assessed as 45% of the right upper limb.

17. At the time of accident as claimed by the appellant, she was earning Rs.6,000/- per month as has been proved by her by filing Income Tax Return for the assessment year 1996-97, 1998-99 for Rs.72,590/- and Rs.99,000/- respectively.

18. The appellant could not continue the business after the accident and still under treatment. She was deprived of her enjoyment of life due to illness and mental agony.

19. Ld. Tribunal has recorded in its award that permanent disability to any part of the body could hamper the working capacity of a person. Therefore, the injured has to be compensated for her permanent disability sustained due to the injuries received in the accident.

20. Undoubtedly, the appellant had suffered disability of 45% in upper limb. Same has been considered as 15% for loss of earning capacity of the whole body. Considering all the facts and evidence into view, Id. Tribunal has granted compensation as under:

“1.	<i>On account of loss of future income</i>	: Rs.86,400/-
2.	<i>On account of loss of amenities of life</i>	: Rs.20,000/-
3.	<i>On account of pain and suffering</i>	: Rs.40,000/-
4.	<i>On account of medical bills</i>	: Rs.50,000/-
	<i>Total</i>	<i>: Rs.1,96,400/-”</i>

21. As regards the medical bills, the appellant had produced bills for an amount of Rs.2,13,361.70/- in all as noted in Para 4 above. Court witness AW1 Dr. Yatinder Kharbanda and AW2, Devender Sharma have proved the said bills. However, Id. Tribunal granted only Rs.50,000/- towards the same.

22. Id. Counsel appearing on behalf of the respondent / insurance company do not dispute the bills proved by the appellant on record. Therefore, I enhance Rs.2,13,361.70 (Rounded off to Rs.2,13,500) on account of medicals bills.

23. Regarding the issue of disability, appellant received injuries on her upper limb, due to which she became 45% disabled qua upper limb. The lower limbs are required for movement and upper limbs are required for any activities. Thus, without all four limbs, a person cannot lead a normal life and if he/she is in some avocation, great

impact falls on the said avocation.

24. In the present case, appellant received 45% disability on upper limb, which is an important part for any activity and avocation. However, ld. Tribunal has considered 15% functional disability.

25. Law has been settled in ***Raj Kumar v. Ajay Kumar and Anr. (2011)ISCC343*** that functional disability has to be assessed based on the nature of disability and its effect on the avocation. In view of above, functional disability is assessed as 23%.

26. On the issue of the multiplier, on the date of accident, the appellant was below the age of 55 years, therefore, she is entitled for the multiplier of 11 instead of 8. I order accordingly.

27. Now, I take up the issue of compensation awarded towards the non-pecuniary losses. Ld. Tribunal has granted Rs.20,000/- on account of loss of amenities of life and Rs.40,000/- on account of pain and suffering.

28. The accident had taken place on 25.05.1996. Around 18 years have been passed. Therefore, I am of the considered opinion, that ld. Tribunal has rightly granted compensation amount as noted above.

29. I further note that no amount has been granted on account of disfigurement. The appellant is a lady, who received disability of 45% on the upper limb. Certainly it disfigured her body. Therefore, I grant Rs.30,000/- on account of disfigurement.

30. Another issue raised by the appellant is that no amount has been granted for future medical treatment. She is still taking treatment, like physiotherapy and other medicines. She requires medicines to prevent acute pain especially in winter days and it is obvious that when a person received such injuries, he or she has to take treatment whenever it is required. However, ld. Tribunal failed to grant any compensation on this account. Therefore, keeping in view the age of the injured lady and the injuries received by her, I grant Rs.30,000/- on account of future medical treatment. Accordingly, the compensation comes as under: -

Sl. No.	Heads of Compensation	Compensation granted by ld. Tribunal	Compensation granted by this Court
1.	On account of loss of future income	Rs.86,400/-	Rs.1,82,160/- (after adding 23% functional disability and multiplier of 11)
2.	On account of loss of amenities	Rs.20,000/-	Rs.20,000/-
3.	On account of pain and suffering	Rs.40,000/-	Rs.40,000/-
4.	On account of medical bills	Rs.50,000/-	Rs.2,13,500/-
5.	On account of disfigurement	Nil	Rs.30,000/-
6.	On account of future medical treatment	Nil	Rs.30,000/-
	TOTAL	Rs.1,96,400/-	Rs.5,15,660/-

31. Therefore, the enhanced compensation comes to Rs.3,19,260/- (Rs.5,15,660 – Rs.1,96,400).

32. Needless to state that the enhanced amount shall also carry interest @ 9% *per annum* from the date of filing of the claim petition till its realization.

33. The respondent no. 3/Insurance Company is directed to deposit the enhanced compensation amount with accrued interest with the Registrar General of this Court within a period of six weeks from today, failing which, appellant / claimant shall be entitled for penal interest @ 12% *per annum* on account of delayed payment.

34. On deposit, the Registrar General is directed to release the amount in favour of the appellant / claimant in terms of the award dated 18.10.2004 on taking steps by her.

35. In view of the above, the appeal is allowed.

SURESH KAIT, J

JANUARY 23, 2014

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