

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

Pronounced on: 10th April, 2015

+ **MAC.APP.480/2008**

NAVEESH TEJPAL ALIAS KITTU TEJPAL

..... Appellant

Through: Mr. Inder Tejpal, Advocate
with Mr. Mayank Wadhwa,
Advocate

versus

KUNWAR ALIAS MINTY TEJPAL & ANR.

..... Respondents

Through: Mr. Salil Paul, Advocate with
Mr. Sahil Paul, Advocate for
Respondent no.2

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. This appeal is for enhancement of compensation of Rs.3,57,400/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the Appellant for having suffered grievous injuries in a motor vehicular accident which occurred on 20.03.1993.
2. A claim petition under Section 166 of the Motor Vehicles Act,

1988 (the Act) was filed by the Appellant against the Respondents with the allegation that on 20.03.1993, the Appellant was travelling in a Maruti Gypsy bearing no.DAE-1861 which was being driven by Respondent no.1. It was the case of the Appellant that the vehicle was driven in a rash and negligent manner by Respondent no.1 as a result of which it collided against a pavement and turned turtle. The Appellant became unconscious and was immediately removed to All India Institute of Medical Sciences (AIIMS). As per PW-4 Dr. A.K. Mahopatra from AIIMS, the Appellant had suffered head injury resulting in a clot in the brain. He remained admitted in AIIMS from 21.03.1993 to 23.04.1993. The Appellant regained consciousness and was able to understand a few things. Consequently, he was discharged from the Hospital. It was further the case of the Appellant that at the time of the accident he sustained serious head injury and was found to be suffering from Post Traumatic Psychosis. His Idea Score as per the Disability Certificate dated 18.01.2005 was 14 which reflected global disability to the extent of 71% according to Indian

Disability Evaluation and Assessment Scale (IDEAS).

3. The Appellant pleaded before the Claims Tribunal that at the time of the accident, he was a student of 11th standard in Bal Bharti Air Force School. He had a very good academic record, he was a member of the cricket team of the school, he was a good swimmer, was an NCC cadet and a Sargent. He had bright future prospects and because of his head injury he was permanently crippled for his life, making him dependant on others throughout his life. The Appellant claimed a total compensation of Rs.12,00,000/- stating that during his indoor treatment in AIIMS, he had to engage private nurses for both day and night @ Rs.500/- to Rs.550/- per day respectively. The Appellant further claimed that he had to engage a private nurse for a period of four months @ Rs.250/- per day since July, 1993. He also had to engage an attendant @ Rs.800/- per month. During appeal, it came on record that the Appellant was working as a photographer by hobby and not working for gain. It also came on record that the Appellant since got married and was having a child. The Claims Tribunal declined to grant any

sum towards reimbursement of Rs.2,00,000/- towards medical bills alleged to have spent on the treatment. The Claims Tribunal observed that though PW-2 testified to spent Rs.2,00,000/- on the treatment of his son but he failed to produce any bills on record in support of the same. Even otherwise, PW-2 admitted himself to be in Government Service and was thus entitled to reimbursement of the said expenditure including purchase of medicines incurred on the treatment. The Claims Tribunal on the basis of Certificate Ex.PW5/A held that the Appellant suffered from permanent disability to the extent of 75% and on the notional income of Rs.15,000/- per annum awarded a compensation of Rs.1,70,400/- towards loss of earning capacity.

4. The overall compensation awarded by the Claims Tribunal is tabulated hereunder:

Sl. No.	Compensation under various Heads	Awarded by the Claims Tribunal (in Rs.)
1.	Pain and Suffering and Loss of Amenities of Life	80,000/-

2.	Loss of Studies and Career Prospects	50,000/-
3.	Permanent Disability	1,70,000/-
4.	Attendant Charges	24,000/-
5.	General and Special Damages	25,000/-
6.	Conveyance and Special Diet	8,000/-
	TOTAL	3,57,400/-

5. It is urged by the learned counsel for the Appellant that the compensation awarded is too niggardly and low. On account of serious brain injury, the Appellant is unable to carry out any work at all and therefore, loss of earning capacity to the extent of 100% on potential income of the Appellant ought to have been granted as against the notional income of Rs.15,000/- per annum. It is further stated that the compensation towards nursing care, conveyance and special diet and pain and suffering and loss of amenities of life is very low.
6. On the other hand, the learned counsel for Respondent no.2 submits that the compensation awarded is just and reasonable and does not call for any interference.

7. In the absence of any appeal filed by the Respondents, the finding on negligence has attained finality. The question that remains to be addressed is the quantum of compensation.
8. Section 166 of the Motor Vehicles Act, 1988 (the Act) enjoins payment of just compensation. 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.”

9. 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 insofar 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.”

10. In *Nizam’s Institute of Medical Sciences v. Prasanth S. Dhananka & Ors.*, (2009) 6 SCC 1, the Supreme Court emphasised that the cases of serious injuries in a motor vehicle accident are worse than the death cases because the victim and his family suffers throughout life. Para 90 of the report is extracted hereunder:-

“90. At the same time we often find that a person injured in an accident leaves his family in greater distress vis-à-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity.”

PAIN AND SUFFERING AND LOSS OF AMENITIES IN LIFE:

11. It is proved on record that immediately after the accident, the Appellant lost consciousness. He was removed to AIIMS. The discharge summary Ex.P3/2 reveals that the Appellant had suffered a serious head injury. Since the Appellant had developed chest infection and was in coma, Tracheostomy had to be done. He had fever for many days and ultimately responded to heavy dose of antibiotics. It was after one month that the Appellant regained consciousness. He was discharged from the Hospital(AIIMS) after one month and three days. The Claims Tribunal had awarded a compensation of Rs.80,000/- towards the head of pain and suffering and loss of amenities in life.
12. While awarding compensation towards non-pecuniary damages *i.e.* towards pain and suffering and loss of amenities and under various other heads, it has to be kept in mind that the accident took place in the year 1993, and once the Appellant is granted interest on the awarded amount the award has to be on the scale

of the year 1993 *i.e.* the date of accident. It may be noted that at the time of the accident, the minimum wages of a graduate were Rs.1,567/- per month while the salary of a Group 'A' Gazetted Officer was about ₹ 4,000/- per month and Group 'B' Gazetted Officer was about ₹ 3,500/- per month. There is no gainsaying that the Appellant had to suffer great pain on account of serious injuries when he got out of coma. At the same time, I will like to bifurcate the sum awarded towards pain and suffering and loss of amenities in life. During the pendency of the appeal in pursuance of the orders of this Court, the Appellant was re-examined with regard to his permanent disability by a Medical Board constituted by Dr. Ram Manohar Lohia Hospital. Dr.R.P. Beniwal, Psychiatrist and member of the Medical Board appeared before this Court on 20.04.2010 and the details of the disability of the Appellant were recorded. At this stage, it will be appropriate to extract paras 4 to 7 of the order dated 20.04.2010, which is as under:

“4. Dr. R.P. Beniwal, Psychiatrist and Member of the Board constituted by Dr. Ram Manohar Lohia Hospital is present in Court and has handed over the original disability certificate issued by the Board. The

same is marked as Ex.-A and is taken on record. Copy of the same be furnished to learned counsel for the appellant as well as to learned counsel for the respondent. The disability of the appellant as per disability certificate? Ex.-A issued by the Board constituted by Dr. Ram Manohar Lohia Hospital is as under:-

“On the basis of detailed history, mental status examination, investigating and evaluation with above mentioned tools, it is concluded that he is a known case of post head Injury Psychosis NOS. His global disability score on IDEAS (Indian Disability Evaluation And Assessment Scale) is 14. The duration of validity of disability is permanent.”

5. Dr. R.P. Beniwal present in Court has been examined with respect to the meaning of the term “global disability” and “score of IDEAS (Indian Disability Evaluation And Assessment Scale)” and the score of “14” mentioned in the certificate.

6. Dr. Beniwal submits that guidelines of evaluation and assessment of mental illness and procedure for certification have been formulated by the Ministry of Social Justice and Empowerment and Ministry of Health and Family Welfare, Government of India. The copy of the notification dated 18th February, 2002 and the guidelines for evaluation and assessment of mental illness and procedure for certification have been produced by Dr. R.P. Beniwal which are taken on record. The copy of the notification dated 18th February, 2002 is marked as Ex.-B and the guidelines for evaluation and assessment of mental illness and procedure for certification are marked as Ex.-C.

7. Dr. R.P. Beniwal further points out that as per the Indian Disability Evaluation And Assessment Scale (IDEAS), the score from 0 to 20 is given in respect of

disability arising out of mental disorder and the score of 14 to 19 means severe disability of 71% to 99%. Dr. Baniwal explains that global disability of 14 means severe disability of 71%. Dr. Beniwal further explains that the disability of the appellant is permanent. The relevant scores mentioned in Indian Disability Evaluation And Assessment Scale (IDEAS) are reproduced hereunder:-

“Scores for each items

- 0 - No disability (none, absent, negligible)*
- 1 - MILD disability (slight, low)*
- 2 - MODERATE disability (medium, fair)*
- 3 - SEVERE disability (high, extreme)*
- 4 - PROFOUND disability (total, cannot*

do)

Total Score

Add scores of the four items and obtain a total score weightage for duration of illness (DOI):

- <2 years : score to be added is 1*
- 2-5 years : add 2*
- 6-10 years : add 3*
- >10 years : add 4*

Global Disability

Total disability score + DOI Score

= Global Disability score percentages:

- 0 No Disability = 0%*
- 1-6 Mild Disability = <40%*
- 7-13 Moderate Disability =40-70%*
- 14-19 Severe Disability =71-99%*
- 20 Profound Disability = 100%*
- Cur off for welfare measures”*

13. It is true that the Appellant has since got married, yet it is

established that the Appellant continues to suffer from severe disability with respect to his brain (just above moderate disability). The severe disability of brain would mean that the Appellant may be able to undertake day to day simple work but will not be in a position to undertake complex things. Normally, a person suffering serious permanent disability is entitled to higher compensation under the head of loss of amenities, enjoyment and expectation of life. At the same time, in *Raj Kumar v. Ajay Kumar & Anr.*, 2011 (1) SCC 343, it was held that where any compensation to the extent of 50% or more is granted towards loss of earning capacity, only a nominal compensation should be awarded towards loss of amenities and expectancy as it will be duplication of the award. In the instant case, I am awarding compensation to the extent of 100% loss of earning capacity and therefore, the Appellant will be entitled to only a nominal sum towards loss of amenities and expectation in life. I tend to award a sum of Rs.40,000/- towards pain and suffering and Rs.40,000/- towards loss of amenities and expectation in life. Thus, the overall compensation of

Rs.80,000/- as awarded by the Claims Tribunal under this head seems to be just and reasonable.

NURSE AND ATTENDANT CHARGES:

14. In the claim petition, the Appellant claimed that during confinement in the Hospital, they had to engage two separate nurses both for day and night. In the claim petition, it was stated that a nurse @ Rs.500/- to Rs.550/- per day had to be engaged for day and night every day. Thus, according to the claim of the Appellant, a sum of Rs.35,000/- approximately was spent on engaging the nurse.
15. It is further the case of the Appellant that a full time nurse @ Rs.250/- was engaged for a period of three months and thereafter a servant was engaged @ Rs.800/- per month. Neither any proof with regard to the nurse engaged nor any bills were obtained from the nurses engaged nor proved on record by the Appellant. Minimum wages of a skilled person in the year 1993 were Rs.1,328/- per month. At the same time, I cannot lose sight of the fact that the trained nurses were available at a

much higher rate. In the absence of any bill obtained from the nurse, it is an uphill task to make an assessment of the wages paid to them both for the day and night. Considering the nature of injuries, it is believable that a private nurse must have been engaged by the Appellant's family. Even if the gratuitous services were rendered by other family member, the Appellant cannot be deprived of the compensation at the cost of tortfeasor. In this connection, a reference may be made to *Delhi Transport Corporation and Anr. v. Lalita*, AIR 1981 Delhi 558, where this Court held that the value of the services rendered by wife, mother have to be compensated. This Court held as under:

“.....A wrong doer cannot take advantage of this 'domestic element'. If the mother renders service to her, instead of a nurse, it is right and just that she should recover compensation for the value of the services that the mother has rendered to her. Mother's services were necessitated by the wrong doing and the injured should be compensated for it. (Cunnigharn v. Harrison 3 All E.R. 463) The services of a wife and mother are worth more than those of a house-keeper because she is in constant attendance and does many more things than a house-keeper. (Regan v. Williamson (1976) 2 All E.R. 241).”

16. Since the minimum wages of a skilled worker in those days were Rs.1,369/- per day, I will assume that an expert nurse must

be charging Rs.200/- for one shift. Thus, I grant a compensation Rs.12,000/- (@ Rs.400 per day) for 30 days service of two day and night nurses. I will further award a compensation Rs.1,500/- per month for a period of six months for engaging a servant or towards gratuitous services rendered by a family member (minimum wages of a skilled worker being Rs.1,369/- per month at the relevant time). The Appellant would further need the help of a family member whenever he will need to consult a doctor or to attend some family function. I will thus, award a further lumpsum of Rs.15,000/- on account of this. The overall compensation for attendant charges comes to Rs.36,000/- as against Rs.24,000/- awarded by the Claims Tribunal.

CONVEYANCE AND SPECIAL DIET:

17. The Claims Tribunal awarded a sum of Rs.8,000/- towards conveyance and special diet. It is proved that the Appellant remained admitted in the Hospital for one month and he remained confined to bed for about four-five months. The Appellant must have spent a sum of Rs.10,000/- on conveyance

as the Appellant remained an OPD patient for a quite long time and will need to consult the doctor periodically may be every year. Thus, I award a compensation of Rs.10,000/- towards conveyance charges. I further award a compensation of Rs.10,000/- towards special diet.

REIMBURSEMENT OF MEDICAL BILLS AND TREATMENT:

18. The Appellant's father claimed that over a sum of Rs.2,00,000/- was spent on the treatment. The Appellant was largely treated in Government Hospitals, more specifically in AIIMS. The Appellant's father at the relevant time was working in the Government and he was entitled to reimbursement of medical expenditure. Amrit Lal Tejpal (PW-2), father of the Appellant while stating that Rs.2,00,000/- was spent on the treatment claimed that initially the Appellant remained in ICU and then he was shifted to private ward. He also stated that Appellant remained in coma for four months even after he was discharged. This is, however, not corroborated by the medical evidence. Rather, the medical evidence reveals that the Appellant regained consciousness in the Hospital and only thereafter, he was

discharged. The Court can take a judicial notice of the fact that attendant or family member of a person suffering with serious injuries cannot retain all the bills. But, at the same time, keeping in view that the treatment was received in Government Hospital and Appellant's father was entitled to reimbursement of medical expenditure on his dependent child, I tend to award a sum of Rs.10,000/- towards purchase of medicines and treatment in respect of the bills which might have been lost or might not have been retained by the Appellant's family members.

LOSS OF EARNING CAPACITY:

19. The Appellant was stated to be studying in Class 11th in Bal Bharti Air Force School which is one of the reputed schools in the city. No evidence was produced with regard to Appellant's academic record. But, at the same time, it is established that the Appellant was an active sportsman. He was a Sargent in NCC, a cricketer and a swimmer. He was receiving education in a good reputed school. Minimum wages of a graduate on the date of the accident were Rs.1,567/- per month, whereas salary of a

Group 'A' Gazetted Officer in the Government on a basic salary of Rs.2,200/- with all allowances was about Rs.4,000/- per month. I will have to make a guess work about the Appellant's potential earning considering his background, the school in which he was studying and the extracurricular activities. In my view, the Appellant just after a couple of years would have started earning at least Rs.3,000/- per month. I will thus, take the annual income of the Appellant to be Rs.36,000/-. Any income beyond Rs.30,000/- per annum was subject to Income Tax to the extent of 20% upto Rs.50,000/-. Thus, the Appellant's income after Income Tax deduction comes to Rs.34,800/- per annum. Considering the disability, it is difficult that the Appellant will be able to carry out any activity for profit in his life. It has come on record that he is working as a photographer by hobby. He or his family members might be able to sell some beautiful photographs/scenery, but I will ignore the income if any from the same. On the income of Rs.34,800/- per annum and adopting the multiplier of 18, I tend to award a sum of Rs.6,26,400/-(Rs.34,800/- x 18) towards loss

of earning capacity.

20. The Claims Tribunal further awarded a sum of Rs.50,000/- towards loss of studies and career prospects. I have awarded a full compensation of Appellant's potential earning capacity. Thus, this award of Rs.50,000/- towards loss of studies and career prospects awarded by the Claims Tribunal would be duplication of the award.

21. The overall compensation is recomputed as under:

Sl. No.	Compensation under various Heads	Awarded by this Court (in Rs.)
1.	Pain and Suffering and Loss of Amenities and Expectation in Life	80,000/- (40,000/- + 40,000/-)
2.	Nurse, Servant and Attendant Charges	36,000/- (12,000/- + 9,000/-+5,000/-)
3.	Conveyance and Special Diet	20,000/- (10,000/- + 10,000/-)
4.	Purchase of Medicines and Treatment	10,000/-
5.	Loss of Earning Capacity	6,26,400/-
	TOTAL	7,72,400/-

22. The overall compensation thus, comes to Rs.7,72,400/-.

23. The compensation is hence, enhanced by Rs.4,15,000/- along

with interest @ 9% per annum from the date of filing of the claim petition till its payment.

24. The enhanced compensation shall be deposited by Respondent no.2 New India Assurance Company Limited in UCO Bank, Delhi High Court Branch, New Delhi within a period of eight weeks from the date of this judgment, failing which the Appellant will be entitled to interest @ 12% per annum from the date of this judgment.
25. On deposit, 50% of the enhanced compensation with proportionate interest shall be released to the Appellant. Rest 50% shall be held in Fixed Deposit for a period of ten years on which the Appellant would be entitled to quarterly interest.
26. The appeal is allowed in above terms.
27. Pending applications, if any, also stand disposed of.

(G.P. MITTAL)
JUDGE

APRIL 10, 2015
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