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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 6th April, 2015

+ MAC.APP. 659/2010

BHAGWAN DASS

..... Appellant

Through: Ms. Rupika Singh, Adv. for
Mr. Navneet Goyal, Adv.

versus

VIJENDER KUMAR & ORS

..... Respondents

Through: Mr. Rajat Brar, Adv. for R-3

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The appeal is for enhancement of compensation of ₹7,25,500/- awarded in favour of the Appellant for having suffered grievous injuries resulting in amputation of the right leg below knee in a motor vehicular accident which occurred on 13.06.2007.
2. In the absence of any appeal by the owner, driver and the Insurance Company, the finding on negligence and liability reached by the Claims Tribunal has attained finality.
3. The details of the compensation awarded as given in para 11 of the impugned judgment are tabulated hereunder:-

<i>Sl.No.</i>	<i>Heads</i>	<i>Compensation</i>
1.	<i>Medical Treatment</i>	₹1,21,500/-
2.	<i>Special diet/Conveyance</i>	₹8,000/-
3.	<i>Loss of income</i>	₹28,000/-
4.	<i>Loss of Earning Capacity</i>	₹4,13,000/-
5.	<i>Pain & sufferings</i>	₹30,000/-
6.	<i>Disfigurement</i>	₹75,000/-
7.	<i>Loss of amenities of life</i>	₹50,000/-
	<i>Total Compensation</i>	₹ 7,25,500/-

4. It is urged by the learned counsel for the Appellant that the Appellant incurred an expenditure of ₹2 lacs towards his treatment but he was granted a compensation of ₹1,21,500/- only. It is also contended that the compensation awarded towards loss of earning capacity, pain and suffering, disfigurement and loss of amenities of life is on the lower side.
5. On the other hand, Mr. Rajat Brar, Advocate appearing for Respondent no.3 submits that the compensation awarded is not only just and reasonable but the same is quite liberal in view of the fact that although the Appellant suffered disability to the extent of 80% in respect of right lower limb but the functional disability of 60% as assessed by the Claims Tribunal was on the higher side. It ought to have been less than 50% as the Appellant is still carrying out the job of a painter even after suffering amputation. It is also stated that the

Claims Tribunal made an addition of 30% towards future prospects/inflation which was not permissible. Reliance for the same is placed on *Reshma Kumari and Ors. v. Madan Mohan and Anr.*, (2013) 9 SCC 65 and a judgment of this Court in *HDFC ERGO General Insurance Co. Ltd. v. Smt. Lalita Devi & Ors.*, MAC. APP. 189/2014 decided on 12.01.2015.

6. The Claims Tribunal awarded compensation of ₹1,21,500/- towards medical expenditure on the bills produced by the Appellant. At the same time, it must be noted that the Appellant suffered amputation of his right lower limb. It is always not possible for the victim/his family members to produce all the bills in respect of the treatment and the medicines purchased. Thus, the compensation of ₹1,21,500/- is raised to ₹1,30,000/-.

LOSS OF EARNING CAPACITY

7. While granting loss of earning capacity, the Claims Tribunal admitted that the Appellant was working as a painter and therefore, took minimum wages of a skilled worker to compute the loss of dependency and further, made an addition of 50% towards inflation.
8. In view of the three Judge Bench decision of the Supreme Court in *Reshma Kumari and Ors. v. Madan Mohan and Anr.*, (2013) 9 SCC 65

and a judgment of this Court in *HDFC ERGO General Insurance Co. Ltd. v. Smt. Lalta Devi & Ors.*, MAC. APP. 189/2014 decided on 12.01.2015 addition of 50% towards inflation was not permissible. At the same time, it may be seen that in the year 2007, a painter being a highly skilled worker might have been earning ₹200/- to 250/- per day and therefore, a sum of ₹5205/- taken as monthly income by the Claims Tribunal to award the loss of earning capacity cannot be faulted.

9. A painter may find it a little difficult to climb wooden stairs for carrying out his job, but at the same time the Appellant being a good painter would at least be able to earn 40% of the wages. In view of this, the loss of earning capacity granted to the extent of 60% cannot be faulted.

PAIN AND SUFFERING AND NON-PECUNIARY DAMAGES

10. The Claims Tribunal awarded a sum of ₹30,000/- towards pain and suffering and ₹75,000/- and ₹50,000/- respectively towards disfigurement and loss of amenities in life.
11. In *Raj Kumar v. Ajay Kumar & Anr.*, 2011 (1) SCC 343 it was laid down that wherever any compensation more than 50% on account of loss of earning capacity is awarded, only a nominal compensation is

awarded towards loss of amenities in life, otherwise it will be a duplication of award. The overall compensation of ₹1,45,000/- awarded towards non-pecuniary damages including pain and suffering, to my mind is just and reasonable keeping in view the judgment in *Raj Kumar* (supra).

LOSS OF INCOME

12. On appreciation of evidence, it was found that the Appellant could not carry out work for about 8 months. The Claims Tribunal awarded a compensation of ₹28,000/- towards loss of salary for 8 months. Since I have held the income of the Appellant to be ₹5205/- per month, I will increase this amount from ₹28,000/- to ₹41,640/-.
13. Similarly, I increase the compensation towards special diet and conveyance charges to ₹10,000/- each as against the consolidated sum of ₹8,000/- awarded by the Claims Tribunal.
14. The compensation awarded is tabulated hereunder:-

<i>Sl. No.</i>	<i>Particulars</i>	<i>Awarded by the Claims Tribunal</i>	<i>Awarded by this Court</i>
1.	<i>Medical Treatment</i>	₹1,21,500/-	₹1,30,000/-
2.	<i>Special diet/Conveyance</i>	₹8,000/-	₹20,000/-
3.	<i>Loss of income</i>	₹28,000/-	₹41,640/-
4.	<i>Loss of Earning Capacity</i>	₹4,13,000/-	₹4,13,000/-

5.	<i>Pain & sufferings</i>	₹30,000/-	₹30,000/-
6.	<i>Disfigurement</i>	₹75,000/-	₹75,000/-
7.	<i>Loss of amenities of life</i>	₹50,000/-	₹50,000/-
	<i>Total Compensation</i>	₹ 7,25,500/-	₹ 7,59,640/-

15. The compensation is thus enhanced by ₹34,140/- which shall carry interest @ 7.5% per annum from the date of filing of the Claim Petition.
16. Respondent no.3 insurance company is directed to deposit the enhanced compensation along with interest within eight weeks.
17. The appeal is allowed in above terms.
18. Pending applications, if any, stand disposed of.

(G.P. MITTAL)
JUDGE

APRIL, 06, 2015

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