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

Date of decision: 14th January, 2015

+ **MAC.APP.912/2012**

MRS. CHANDERMA Appellant

Through: Mr. Manish Maini, Adv.

versus

BALINDER SINGH & ORS. Respondents

Through: Ms. Suman Bagga, Adv. with
Mr. Pankaj Gupta, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

G. P. MITTAL, J. (ORAL)

1. By way of this appeal, the Appellant seeks enhancement of compensation of Rs.7,90,978/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) to the Appellant for having suffered injuries in a motor vehicular accident which occurred on 20.11.2010 at 10:30 a.m.
2. On appreciation of evidence, the Claims Tribunal found that the accident occurred due to rash and negligent driving of bus bearing registration no.DL-1PB-6534 by Respondent no.1 Balinder Singh. Immediately after the accident, the Appellant was removed to Dr. Ram Manohar Lohia Hospital (RML). There were crush injuries on left hand and the left hand (palm and fingers) had to be amputated.

3. It is the case of the of the Appellant that the Appellant remained away from work for 45 days. She was issued a disability certificate Ex.PW-2/A showing that the Appellant had suffered disability to the extent of 80% in respect of her left upper limb. Following contentions are raised on behalf of the Appellant:-

- (i) The Appellant was working as a maid servant. Her loss of earning capacity ought to have been taken as 100% as against 72% taken by the Claims Tribunal;
- (ii) The Claims Tribunal awarded compensation on the basis of minimum wages of unskilled worker. However, as a maid servant, she ought to have been considered a skilled worker;
- (iii) No compensation has been awarded for the period of 45 days for which she remained away from work;
- (iv) Future prospects have not been taken into consideration and no addition in that respect has been made by the Claims Tribunal;
and
- (v) The compensation awarded towards non pecuniary damages is on the lower side.

4. On the other hand, Ms. Suman Bagga, Advocate, appearing for Respondent no.3 Insurance Company submits that the compensation

awarded is just and reasonable. It is urged that the disability of 72% taken because of the amputation of left hand is on the higher side.

5. In *Arvind Kumar Mishra v. New India Assurance Company Limited*, (2010) 10 SCC 254, the Supreme Court while dealing with a case of disability on account of permanent disability observed that in personal injury cases, an attempt should be made to put the injured in the same position as he was as far 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.”

6. In *Nizam’s Institute of Medical Sciences v. Prasanth S. Dhananka & Ors.*, (2009) 6 SCC 1, the Supreme Court emphasised that cases of serious injuries in motor vehicle accident are worse than death cases because the victim and his family suffer 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.”

7. In *Raj Kumar v. Ajay Kumar & Anr.*, 2011 (1) SCC 343, the Supreme Court brought out the distinction between permanent disability and functional disability resulting in the loss of earning capacity. It was laid down that the compensation on account of loss of earning capacity has to be granted with accordance with the nature of the job undertaken by the victim of motor accident. Paras 11 and 14 of the report are extracted hereunder:

“11. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this Court in Arvind Kumar

Mishra v. New India Assurance Co. Ltd. 2010 (10) SCC 254 and Yadava Kumar v. D.M., National Insurance Co. Ltd. 2010 (10) SCC 341.

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14. 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 found 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."

8. Considering that the Appellant was working as a maid servant, the Claims Tribunal took the loss of earning capacity as 72%. It is urged by the learned counsel for the Appellant that both hands are needed to do such job. I fully agree with the learned counsel for the Appellant that a person would need both hands to do this menial job. At the same

time, primarily the menial work is carried out with the right hand. In my view, the Claims Tribunal was quit liberal in taking loss of earning capacity as 72%. At the same time, I am not inclined to interfere with the same.

9. As far as future prospects are concerned, this Court while relying on *Reshma Kumari & Ors. v. Madan Mohan & Anr. (2013) 9 SCC 65* in *New India Assurance Company Ltd v. Harpal Singh & Ors., MAC APP.138/2011, decided on 06.09.2013* and *HDFC Ergo General Insurance Co Ltd. v. Smt Lalita Devi & Ors, MAC.APP. 189/2014, decided on 12.01.2015* has held that future prospects cannot be granted where a person is getting fixed wages. In view of this, the Appellant will not be entitled to any increase towards future prospects.
10. The Appellant had suffered serious injuries on her left hand as a result of which her left hand had to be amputated. The Appellant claimed that she was away from work for a period of about 45 days. She ought to have been awarded the wages for the period of 45 days. I accordingly award a sum of Rs.8100/-.
11. A compensation of Rs.25,000/- awarded towards loss of amenities is also on the lower side. At the same time, it was held in *Raj Kumar (supra)* that where substantial compensation is awarded towards loss

of earning capacity, lower compensation should be awarded towards non-pecuniary damages.

12. In view of this, I award a compensation of Rs.1,00,000/- towards loss of amenities and Rs.50,000/- towards disfigurement.

13. The overall compensation is tabulated as under:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal (in Rs.)	Awarded by this Court (in Rs.)
1.	Medicines and Treatment	6950/-	6950/-
2.	For loss of earning on account of disability	6,84,028/-	6,84,028/-
3.	Pain and suffering	50,000/-	50,000/-
4.	Conveyance & Special Diet	25,000/-	25,000/-
5.	Loss of amenities, inconvenience	25,000/-	1,00,000/-
6.	Wages for 45 days (Rs.180 x 45)	--	8100/-
7.	Disfigurement	--	50,000/-
	Total	Rs.7,90,978/-	Rs.9,24,078/-

14. The compensation is accordingly enhanced from Rs.7,90,978/- to Rs.9,24,078/-.

15. The enhanced compensation of Rs.1,33,100/- shall carry interest @ 7.5% per annum from the date of filing of the petition till its payment.

16. Respondent no.3 Insurance Company is directed to deposit the enhanced compensation along with proportionate interest within four weeks in UCO Bank, Delhi High Court, New Delhi.
17. 75% of the enhanced compensation awarded shall be held in fixed deposit for a period of two years, four years and six years in equal proportion. Rest shall be released to the Appellant on deposit.
18. The appeal is allowed in above terms.
19. Pending applications, if any, also stand disposed of.

(G.P. MITTAL)
JUDGE

JANUARY 14, 2015
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