

\$~R-12

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

Date of Decision: 11th February, 2016

+ **MAC.APP. 929/2006**

BABY MONIKA @ GOLU

..... Appellant

Through: None

versus

DELHI DUGDH PARIVAHAN & ORS. Respondents

Through: Mr. A K Soni, Adv. for R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. This appeal under section 173 of Motor Vehicle, Act, 1988 (MV Act) was presented in November, 2006 on behalf of the claimant seeking enhancement of the compensation awarded by the Motor Accident Claims Tribunal (the Tribunal) in claim case that had been submitted before the said forum on 02.01.2004, registered as suit No.03/2004, decided by judgment dated 03.03.2006. The claimant had claimed compensation in the sum of ₹15 lakhs for injuries suffered in motor vehicular accident by motor vehicle bearing registered No.DL-1D-A-7874 (offending vehicle) that occurred at about 6.15 AM on 30.11.2003 in front of Digamber Jain Mandir, Main Road, C-Block, Yamuna Vihar, Delhi. The offending vehicle was concededly owned by the first respondent, driven at the relevant point of time by the second respondent and covered by an insurance policy against third party risk with the third respondent. The Tribunal awarded compensation in the sum of

₹1,53,000/- and directed the insurance company to indemnify with interest at 7.5% per annum within one month from the date of order till realisation.

2. The computation of compensation worked out by the Tribunal is as under :

“1. Pain and Suffering	₹20,000/-
2. Reasonable Medical Expenses, though actual medical expenses are ₹1,800/-	₹5,000/-
3. Special diet and conveyance	₹5,000/-
4. Expense on attendant	₹3,000/-
5. Permanent disability, loss of future earnings and future unhappiness	₹1,00,000/-
6. Shortening of life spent	<u>₹20,000/-</u>
Total	<u>₹1,53,000/-”</u>

5. Though the appeal was filed, effective and timely steps were not taken for service of the respondents. Eventually, by order dated 09.02.2009, the appeal was admitted and the service of first and second respondent was dispensed with in view of the fact that the validity of insurance policy of the offending vehicle was not in dispute. The appeal came up for hearing in 2012 but matter was referred with the consent of the claimant to conciliation through Lok Adalat. No fruitful results could be achieved and, thus, the appeal came back for consideration by the court. It was taken up for hearing on 16.05.2013 but dismissed in default for non-prosecution. On application for restoration being moved, again

none appeared on 15.01.2014 and the said application was also dismissed in default. Subsequently, on another application being moved the appeal was restored by order dated 03.04.2014. None appeared on the next two dates i.e. 28.11.2014 and 03.12.2014 in which view it was again dismissed in default. On yet another application being moved, the appeal was again restored by order dated 05.01.2015 even though no one had appeared for the appellant to prosecute. It came up for hearing on 18.01.2016, but none appeared. Situation remains the same even today. Having regard to the nature of the claim, the delay that has occurred, assumably on account of neglect by the counsel representing the claimant, there is no reason the appeal should be dismissed in default once again because that would only give rise to another round of application for restoration. It is desirable that it is considered on merits and a decision taken on the issues raised about compensation.

6. The basic grievance in the appeal is that the appellant, a child aged 2 ½ years, had suffered permanent disablement as a result of the injuries suffered, in that her left lower limb had to be amputated below knee. The Tribunal has made a rough estimate of Rs.1 lakh on account of loss of future earnings due to permanent disablement and future unhappiness put together. There is indeed no basis of such computation.

7. Assumably, the child would have grown up and become financially independent. In these circumstances, one permissible method of calculation is to adopt the notional income in relation to non-earning persons as prescribed in the second schedule to the MV Act which was adopted for similar purposes though in the case of death of minor children, in the case of *R K Malik & Anr. v. Kiran Pal & Ors.* (2009) 14

SCC 1. Thus, it is assumed that the claimant would have been earning ₹15,000/- per annum upon turning major.

8. The claimant had proved before the Tribunal that she had suffered 65% of permanent disability in relation to the left lower limb (Ex.PW-4/18). Since the amputation of the left leg below knee is treated as resulting in 50% of the loss of earning capacity in terms of first schedule appended to Employees Compensation Act, 1923, the assessment made by the Tribunal to the extent of 18.6% is totally wrong. The functional disability must be assessed to the extent of 50%, and, therefore, the loss of future earnings to the extent of ₹7,500/- per annum would need to be compensated. Since the age of the claimant was 2 ½ years only, the multiplier of 15 will have to be applied. [*Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121]. Thus, the total compensation awarded on loss of future earnings comes to (7500 x 15) ₹1,12,500/-.

9. Formal evidence was not led on the expenditure incurred on special diet, conveyance or engaging of an attendant. Expenditure on treatment was proved only to the extent of ₹1,800/-. But the Tribunal awarded ₹5,000/- by some guess work. It also awarded ₹20,000/- each under the heads of pain, suffering and shortening of life. While no proof has been adduced even in the appeal as to the expenditure incurred on treatment, having regard to the nature of injury and its aftermath suffered the compensation under all the said heads needs to be suitably revised. In the case reported as *Laxman v. Oriental Insurance Co. Ltd.* (2011) 10 SCC 756, in which accident had occurred on 08.09.2003 and the claimant had suffered similar disability in the right lower limb, the Supreme Court had

awarded ₹1,50,000/- on account of pain and agony, ₹1 lakh on account of loss of amenities of life besides ₹1 lakh on account of loss of prospects of marriage. Given the state of child claimant in this case, similar award needs to be made under all the said heads. Having regard to the nature of injuries, compensation on account of medical expenses, special diet and conveyance and expenses on attendant also deserve to be enhanced to ₹20,000/- each.

10. The total compensation awardable in this case, thus, comes to (1,12,500/- + 1,50,000 + 1,00,000 + 1,00,000 + 20,000 + 20,000 + 20,000) ₹5,22,500/-.

11. The compensation is accordingly enhanced to ₹5,22,500/- (Rupees Five Lakhs Twenty Two Thousand and Five Hundred only). It shall carry interest as awarded by the Tribunal. The entire enhanced amount shall be put in the FDR in the name of the appellant in a nationalised bank for a period of 10 years with liberty to draw monthly interest.

12. The insurance company is directed to deposit the enhanced award in terms of above directions with the Tribunal within 30 days whereafter it shall be dealt with in accordance with the directions. The interest shall not be levied for the period the appeal remained dismissed.

13. The appeal is disposed of in above terms.

14. Trial court record be returned.

**R.K. GAUBA
(JUDGE)**

FEBRUARY 11 2016/VLD