

R-20(part-1)

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

+ MAC.APP.No.58/2007

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Reserve on : 10th February, 2012
Date of decision : 30th March, 2012

MST. IMRAN KHANAppellant
Through : Mr. I.A. Rahmani, Adv.

versus

MOHAN BHOYAN & ORS.Respondents
Through : None.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of ₹2,20,300/- has been awarded to the appellant. The appellant seeks enhancement of the award amount.

2. The accident dated 2nd September, 2000 resulted in grievous injuries to the appellant. The appellant was aged 16 years at the time of accident. The appellant was admitted in Lok Nayak Jai Prakash Hospital on 2nd September, 2000. The appellant was discharged on 6th September, 2000 and he continued the treatment in the OPD for about four years. The appellant is disabled to the extent of about 40% in respect of the right ankle as per the disability certificate - Ex.PW3/2. The All India Institute of Medical Sciences examined the appellant

and issued a certificate, Ex.PW3/1 that the IQ was within the range of 45% to 50% and had moderate mental retardation. PW-4, Professor Manju Mehta appeared in the witness box and deposed that the intelligence of the appellant was assessed and the disability was found to be 45% to 50% and there were no chances of any improvement in the future. She further deposed that the appellant had developed moderate mental retardation after the accident due to the head injury (Ex.PW3/3 & Ex.PW3/J). The appellant claimed to be self employed, earning ₹4500/- per month in leather purse business. The Claims Tribunal took the annual income of the deceased as ₹15,000/- per annum and applied the multiplier of 16. The Claims Tribunal took the loss of earning capacity of the appellant to be 50% on the basis of the disability certificate and awarded ₹1,20,000/- towards loss of earning capacity due to permanent disability. The claim Tribunal awarded ₹20,300/- towards expenditure on treatment, ₹10,000/- towards special diet and conveyance, ₹30,000/- towards non-pecuniary compensation and ₹40,000/- towards permanent mental retardation. The total compensation awarded by the Claims Tribunal to the appellant is ₹2,20,300/- along with interest @ 7% per annum.

3. The learned counsel for the appellant has made following

submissions at the time of hearing of this appeal:-

- (i) The compensation for loss of pain and suffering be enhanced.
- (ii) The compensation for loss of amenities of life be enhanced.
- (iii) The compensation for loss of income due to permanent disability be enhanced.
- (iv) The rate of interest be enhanced from 7% per annum to 12% per annum.

4. The appellant has suffered about 40% disability with respect to the right ankle and 45% to 50% disability with respect to his medical condition with no chance of improvement which has resulted in 50% loss of earning capacity in respect of which the Claims Tribunal has awarded a sum of ₹30,000/- as non-pecuniary compensation. In **Oriental Insurance Company Ltd. v. V.S. Vijay Kumar Mittal, 2008 ACJ 1300**, this Court discussed the principles relating to the award of non-pecuniary compensation towards pain and suffering, loss of amenities of life and disfiguration. This Court examined all the previous judgments with respect to the non-pecuniary compensation awarded in the case of permanent disability and held that the courts have awarded about ₹3,00,000/- under the heads of non-pecuniary damages

for permanent disability of 50% and above. The findings of this Court are as under:-

“10. The possession of one's own body is the first and most valuable of all human rights and while awarding compensation for bodily injuries this primary element is to be kept in mind. Bodily injury is to be treated as a deprivation which entitles a claimant to damages. The amount of damages varies on account of gravity of bodily injury. Though it is impossible to equate money with human suffering, agony and personal deprivation, the Court and Tribunal should make an honest and serious attempt to award damages so far as money can compensate the loss. Regard must be given to the gravity and degree of deprivation as well as the degree of awareness of the deprivation. Damages awarded in personal injury cases must be substantial and not token damages.

11. The general principle which should govern the assessment of damages in personal injury cases is that the Court should award to injured person such a sum as will put him in the same position as he would have been in if he had not sustained the injuries.

12. Broadly speaking, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and non pecuniary damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money. Whereas, non pecuniary damages are those which are incapable of being assessed by arithmetical calculations.

13. Pecuniary loss may include the following:

- (i) Special damages or pre-trial pecuniary loss.
- (ii) Prospective loss of earnings and profits.
- (iii) Medicinal expenses.
- (iv) Cost of future care and other expenses.

14. Non pecuniary loss may include the following:

- (i) Pain and suffering.
- (ii) Damages for mental and physical shock.
- (iii) Loss of amenities of life which may include a variety of matters i.e. on account of injury the injured may not be able to walk, run or sit etc.
- (iv) Loss of expectation of life i.e. on account of injury normal longevity of the life of the person concerned is shortened.
- (v) Disfigurement.
- (vi) Discomfort or inconvenience, hardship, disappointment, frustration and mental stress in life.

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18. In order to properly appreciate the contentions advanced by the learned counsel for the appellant, I note the following judgments:-

(i) B.N.Kumar vs. D.T.C., 118 (2005) DLT 36.

In said case, injured sustained crush injuries on his right leg leading to its amputation above knee in a road accident on 5th November 1987. He suffered a permanent disability of 85%. Noting various judgments wherein Courts had awarded ₹3,00,000/- under the head non-pecuniary damages, a Single Judge of this Court awarded ₹75,000/- for 'pain and suffering' and ₹2,00,000/- for 'continuing disability suffered by him'. Thus, a total of ₹2,75,000/- was awarded under this head.

(ii) Fakkirappa vs. Yallawwa & Anr., 2004 ACJ 141

In said case, a minor male child sustained grievous injury in a road accident which occurred on 8.5.2000 resulting in amputation of his left leg below knee. Considering the gravity of injury suffered the injured, Division Bench of Karnataka High Court awarded following compensation under the head 'non-pecuniary damages':-

- | | | |
|-------|----------------------------|---------------|
| (i) | Pain and suffering | : ₹50,000/- |
| (ii) | Loss of amenities of life | : ₹1,00,000/- |
| (iii) | Loss of marriage prospects | : ₹50,000/- |

(iv)	Damages for amputation of leg before knee	: ₹1,50,000/-
(v)	Loss of expectation of life	: ₹50,000/-
		Total : ₹4,00,000/-

(iii) K. Shankar v. Pallavan Transport Corporation, 2001 ACJ 488

In said case, injured sustained serious injuries on his right leg in an accident on 14.2.1989. His right leg was amputated and he suffered permanent disability of 80%. A learned Single Judge of Madras High Court awarded the following compensation under the head 'non-pecuniary damages'.

(i)	For permanent disability	: ₹80,000/-
(ii)	Pain and suffering	: ₹50,000/-
(iii)	Loss of expectation of life and proper marital alliance	: ₹50,000/-
(iv)	For mental agony	: ₹1,00,000/-
		Total : ₹2,80,000/-

(iv) M. Jaganathan v. Pallavan Transport Corporation, 1999 ACJ 366

In said case, injured aged 45 years sustained injuries in an accident on 21.6.1990. The injury sustained by the injured resulted in the amputation of his left leg above the knee. Division Bench of Madras High Court awarded following compensation under the head 'non pecuniary damages':-

(i)	Pain and suffering	: ₹1,00,000/-
(ii)	Compensation for continuing permanent disability	: ₹2,00,000/-
(iii)	Mental agony, torture and Humiliation because of Amputation	: ₹75,000/-
		Total : ₹3,75,000/-

(v) Bhagwan Singh Meena v. Jai Kishan Tiwari, 1999 ACJ 1200

In said case, the injured sustained severe and serious injuries on account of the road accident. His right leg was amputated. A learned Single Judge of Rajasthan High Court awarded a compensation of ₹3,00,000/- under the head non-pecuniary damages.

(vi) Dr. Gop Ramchandani v. Onkar Singh & Ors., 1993 ACJ 577

In said case, in an accident which had occurred on 17.12.1985, injured sustained injuries because of which his left leg was amputated resulting in 50% permanent disability. A Single Judge of Rajasthan High Court awarded a compensation of ₹3,00,000/- under the head 'non pecuniary damages'.

Break-up of the compensation under the said head is as under:-

(i)	Physical and mental agony	: ₹1,00,000/-
(ii)	Permanent disability	: ₹1,00,000/-
(iii)	Loss of social life and loss in profession	: ₹1,00,000/-
Total		<u>₹3,00,000/-</u>

(vii) Jitendra Singh v. Islam, 1998 ACJ 1301

In said case, in an accident which had occurred on 14.02.1992, injured sustained injuries because of which his left leg was amputated resulting in 55% permanent disability. A Single Judge of Rajasthan High Court awarded a compensation of ₹3,00,000/- under the head 'non pecuniary damages'.

(viii) Iranna v. Mohammadali Khadarsab Mulla & Anr. 2004 ACJ 1396

In said case, on 19.4.2000, injured aged 7 years met with an accident. Due to the said accident, he

sustained grievous injuries resulting in amputation of his left leg below knee. Tribunal awarded following compensation to him under the head 'non pecuniary damages':-

(i)	Pain and suffering	: ₹50,000/-
(ii)	Loss of amenities, happiness, frustration	: ₹1,00,000/-
(iii)	Loss of marriage prospects	: ₹50,000/-
(iv)	Amputation of leg below knee and knee dis-articulation	: ₹1,50,000/-

Total : ₹3,50,000/-

From the afore noted judicial decisions, a trend which emerges is that between the years 1985 to 1990, Courts have been awarding about ₹3,00,000/- under the head 'non pecuniary damages' for amputation of leg resulting in permanent disability of 50% and above."

5. Following the aforesaid judgment, a sum of ₹50,000/- is awarded to the appellant towards pain and suffering, ₹50,000/- is awarded towards loss of amenities of life and ₹50,000/- is awarded towards disfiguration.

6. The Claims Tribunal has taken the loss of earning capacity of the appellant to be 50% on the basis of the disability certificate which is fair and reasonable considering that the appellant suffered about 40% disability with respect to the right ankle and moderate mental retardation after the accident due to head injury as deposed by PW-4, Professor Manju Mehta. However, the Claims Tribunal has erred in taking the income of the appellant to be ₹15,000/- per annum.

The appellant was self-employed and in the absence of sufficient proof of income, the Claims Tribunal ought to have taken the minimum wages for a skilled worker into consideration. The minimum wages in respect of a skilled worker at the relevant time were ₹2,948/- per month. The appellant was aged 16 years at the time of the accident and applying the multiplier of 18 and taking 50% of the same, the loss of earning capacity due to permanent disability is computed to be ₹3,18,384/- $[(₹2,948 \times 12 \times 18)/2]$.

7. The appellant is entitled to total compensation of ₹4,98,684/- as per the break-up given hereunder:-

1.	Compensation for pain and suffering	₹50,000/-
2.	Compensation for loss of amenities of life	₹50,000/-
3.	Compensation for disfiguration	₹50,000/-
4.	Compensation for loss of earning capacity due to permanent disability	₹3,18,384/-
5.	Compensation towards expenditure on treatment	₹20,300/-
6.	Compensation towards special diet and conveyance	₹10,000/-
Total		₹4,98,684/-

8. The Claims Tribunal has awarded interest @7% per annum which is on a lower side. The Apex Court has awarded interest @9% per annum in the recent case of **MCD v. Association of Victims of Uphaar Tragedy, AIR 2012 SC 200**. Following the judgment of the Apex Court, the rate of interest is enhanced from 7% per annum to 9% per annum.

9. The appeal is allowed and the award amount is enhanced from ₹2,20,300/- to ₹4,98,684/- along with interest @9% per annum from the date of filing of the claim petition till realization. The enhanced award amount along with interest be deposited with UCO Bank, Delhi High Court Branch by means of cheque drawn in the name of UCO Bank A/c Imran Khan.

10. Upon the aforesaid amount being deposited, the UCO Bank is directed to release 10% of the amount by transferring the same to his Saving Bank Account. The remaining amount be kept in fixed deposit in the name of the appellant in the following manner:-

- (i) Fixed deposit in respect of 10% for a period of one year.
- (ii) Fixed deposit in respect of 10% for a period of two years.
- (iii) Fixed deposit in respect of 10% for a period of three years.
- (iv) Fixed deposit in respect of 10% for a period of four years.
- (v) Fixed deposit in respect of 10% for a period of five years.
- (vi) Fixed deposit in respect of 10% for a period of six years.

(vii) Fixed deposit in respect of 10% for a period of seven years.

(viii) Fixed deposit in respect of 10% for a period of eight years.

(ix) Fixed deposit in respect of 10% for a period of nine years.

11. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the respective Savings Account of the beneficiary.

12. Withdrawal from the aforesaid account shall be permitted to the beneficiary after due verification and the Bank shall issue photo Identity Card to the beneficiary to facilitate identity.

13. No cheque book be issued to the beneficiary without the permission of this Court.

14. The original fixed deposit receipts shall be retained by the Bank in the safe custody. However, the original Pass Book shall be given to the beneficiary along with the photocopy of the FDRs. Upon the expiry of the period of each FDR, the Bank shall automatically credit the maturity amount in the Savings Account of the beneficiary.

15. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.

16. Half yearly statement of account be filed by the Bank in this Court.

17. On the request of the beneficiary, Bank shall transfer the Savings Account to any other branch according to their convenience.

18. The beneficiary shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.S. Rao, AGM, UCO Bank, Delhi High Court Branch, New Delhi (Mobile No. 09871129345).

19. The pending application is disposed of.

20. Copy of this judgment be sent to Mr. M.S. Rao, AGM, UCO Bank, Delhi High Court Branch, New Delhi (Mobile No.09871129345). Copy of this judgment be sent to respondent No.3.

MARCH 30, 2012

J.R. MIDHA, J