

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

+ **MAC.A. 659/2006**

% *Judgment reserved on: 15th May, 2013*
Judgment delivered on: 29th May, 2013

S.K. CHAUHAN

..... Appellant

Through: Mr. Anil Aggarwal and Mr. Puneet Aggarwal, Advs.

versus

RAHIS AND ORS.

..... Respondents

Through: Mr. D.K. Sharma, Adv. for R3.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Instant appeal has been preferred against the impugned judgement dated 28.04.2006, whereby Ld. Tribunal has granted compensation for a sum of Rs.7,60,865/- with interest @ 6% per annum.

2. Vide the instant appeal appellant is seeking enhancement of the compensation amount on the ground that due the accident in question appellant's right arm got amputated and his right leg was fractured and was kept in a Cast. Brace-fitting was done for three months. His Fiat car was also totally damaged in the accident.

3. In support of the claim, the appellant examined himself as PW2 wherein he stated that when he reached Village-Baheri on Roorkee Road, a Canter bearing registration no. UP-02-6524 (hereinafter called the offending vehicle) which was being driven in a rash and negligent manner came from the opposite side and collided with his car. Due to the impact, petitioner's car overturned and all the occupants sustained injuries. They were taken to M.G. Hospital at Hardwar by the officials of PS-Jawalapur. Thereafter, he was shifted to St. Stephens Hospital, Delhi on the next day.

4. Appellant further deposed that he remained admitted in St. Stephens Hospital, Delhi from 03.04.1999 to 27.04.1999. He testified that he was the Director of M/s. Compact Diagnostics India Pvt. Ltd. and was earning a sum of Rs.12,000/-per month. On account of the accident he could not look after his business for about six months. Further deposed that he spent a sum of Rs.90,000/- on his medical treatment and care. The charges of towing his Car to Delhi for Rs.2,200/- is Ex.PW2/22 and the estimate of its repair was Rs.35,000. His medical bills are Ex.PW2/2 to Ex.PW2/18. He had to purchase an artificial limb, receipt of which is Ex.PW2/19. The bills of St. Stephen Hospitals are Ex.PW2/20 & Ex.PW2/21 and his disability certificate is Ex.PW2/1. The photographs of the accidental car are Ex.PW2/23 to Ex.PW2/27. The medical report of St. Stephens Hospital, where he remained admitted from 03.04.1999 to 26.04.1999 is Ex.PW1/1.

5. To prove the salary of the appellant, he has examined PW3 from his office, who brought the Memorandum and Article of Association

Ex.PW3/1 and photocopies of various qualifications of the petitioner are Ex.PW3/2 to Ex.PW3/7.

6. Ld. Counsel appearing on behalf of the appellant submitted that the appellant is a Graduate Engineer and he has proved that he was earning a sum of Rs.12,000/- per month. Despite, Ld. Tribunal has considered the minimum wages Rs.3,108/- per month applicable to Graduate at the relevant time.

7. Ld. Counsel has relied upon a judgment delivered by this court in case of *Meenu Tognatta & Ors. v. National Insurance Co. Ltd. & Ors.* in *MAC.No. 238/2012* decided on 20.04.2012, wherein this court has passed as under:

“In the case of Haji Zainullah Khan (Dead) by Lrs. v. Nagar Mahapalika, Allahabad, 1994 (5) SCC 667, death of a young boy, aged 20 years took place in an accident which happened in the year 1972. The deceased was a student of B.Sc Ist year (Biology), a compensation of Rs.1,46,900/- was increased and rounded off to Rs.1,50,000/-.

In Ramesh Chand Joshi v. New India Assurance Company MAC APP.212-213/2006 decided on 20.01.2010 this Court took the potential income of a BE (Bio-Technology) First year student of Delhi College of Engineer (DCE) Rs.38,333/- per month.

The gross salary of a Group ‘A’ officer in the Central and the State Govt. on the date of the accident i.e. 19.11.2004 on the basic pay of Rs.8,000/- was Rs.17,980/- per month. If a qualified degree holder

Engineer joined a Govt. service in the year 2004, he would get a salary of Rs.8,000/- plus all allowances. The placements in Private Sectors were on a much higher salary.

The loss of dependency which works out in the case of deceased Disha thus comes to Rs.22,68,000/- (18,000/- + 50% x 1/2 x 12 x 14)."

8. Ld. Counsel for the appellant submitted that in the above cited cases, claimants were second year students of Engineering, whereas the appellant is a qualified Engineer, therefore, Ld. Tribunal has wrongly considered the minimum wages applicable to Graduates. In above cited case, Ld. Tribunal has considered the monthly income of the deceased as Rs.18,000/-, however, in the present case, appellant claimed less salary of Rs.12,000/- per month, but the Ld. Tribunal failed to consider even the said income.

9. Regarding second issue, Ld. Counsel has argued that there was amputation of right arm and the appellant was under continuous treatment for three months as has been proved before the Ld. Tribunal and due to which, he could not attend his work for about six months. However, the Ld. Tribunal has considered that he remained out of work for a period of four months only and accordingly granted a sum of Rs.12,432/- towards of loss of income, which is on a very lower side.

10. Regarding third issue, counsel for the appellant has argued that Ld. Tribunal, while granting compensation on disability, has wrongly considered 40% disability as per Ex.PW2/1. Ld. Counsel submitted

that in Workmen's Compensation Act, 1923 amputation below shoulder with stump less than 20.32 cms from tip of acromion, 80% is considered and even loss of hand or of the thumb and four fingers of one hand if amputated are being considered 60% disability.

11. Ld. Counsel submitted that as per the disability certificate, the disability has been assessed more than 40% and that could be 80% or 60% or more even 100%. Therefore, Ld. Tribunal has wrongly considered the functional disability as 40%.

12. Ld. Counsel further submitted that the issue regarding salary certificate and academic qualification of the appellant / claimant which was proved by PW3 Jagdip Jatta, National Sales Man of Compact Diagnostics India Pvt. Ltd. and no suggestion was put to the said witness by the Insurance Company. Therefore, Ld. Tribunal has considered those documents as proof. Even otherwise, the Insurance Company has not produced any witness contrary to the proof produced by the appellant.

13. To sum up his arguments, Ld. Counsel for the appellant submitted that the salary of the appellant has been considered on a very lower side. His disability has been wrongly considered as 40% and his loss of income of four months has been considered, whereas he could not resume his work for six months. Hence, the appellant is seeking enhancement of the compensation.

14. On the other hand, Ld. Counsel appearing on behalf of the insurance company submitted that the appellant examined himself

before the Ld. Tribunal and during cross-examination he stated as under:

“I have not brought any document pertaining to my working as Director, Compact Diagnosis. I have also not brought any document in support of my earnings. It is wrong to suggest that I was not earning Rs.12,000/- per month. I have not filed any document pertaining to my qualification. It is wrong to suggest that I did not spend Rs.90,000/- on my treatment. I have no documentary evidence as regards money spent by me on my car. My car was not comprehensive insured. I do not have the policy of my car’s insurance. I do not have any documentary record to show that I remained away from work for six months.”

15. Ld. Counsel submitted that in the absence of any stringent proof of his claim, Ld. Tribunal has rightly considered the minimum wages applicable to a graduate and whatever medical bills were produced, each and every bill was considered and accordingly a compensation for a sum of Rs.44,012/- was granted.

16. Further submitted that for loss of income, Ld. Tribunal granted Rs.12,432/- and for permanent disfigurement and loss of amenities of life Rs.1,00,000/- was granted. Even for loss of future prospects, Ld. Tribunal has granted Rs.4,64,371/- and for damage towards the appellant’s car a sum of Rs.20,000/- was granted.

17. As far as the disability is concerned, Ld. Counsel submitted that appellant has relied upon a Schedule of Workmen’s Compensation Act, however, no relief can be granted under this Act, if the petition has been filed under the Motor Vehicles Act, 1988. The appellant

cannot choose one relief under the Motor Vehicles Act and other under the Workmen's Compensation Act. Therefore, Ld. Tribunal has rightly considered the disability as 40% because in the said disability certificate it is only stated that he received more than 40% permanent disability and is entitled to get all benefits as per the Govt. Rules.

18. Regarding the medical bill, Ld. Counsel submitted that Ld. Tribunal has considered each and every bill of the medical expenses incurred by the appellant during his treatment and post-treatment. Therefore, no enhancement can be considered in the absence of any proof of the treatment received by the appellant.

19. I have heard learned counsel for the parties.

20. In ***Rajkumar Vs. Ajay Kumar & Anrs. 2011 ACJ 1***, the Supreme Court held as under:-

“ The provision of the Motor Vehicles Act, 1988 ('Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal

amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.”

21. In the instant case, injured/appellant was aged between 35 to 40 years at the time of accident. He was a qualified Graduate Engineer and enjoying good health. Ex. PW3/1 shows that the injured was working as Director at the time of the accident.

22. In *National Insurance Co. Ltd. Vs. T.A. Nicholas & Ors. 2010 ACJ 1289*, the injured was student of B.E. Computer Science (Final Year). Ld Tribunal while calculating the loss of future income considered income of Rs.10,000/- per month. Same was upheld by the Appellate Court (High Court of Madras).

23. In case of *Divisional Manager and the New India Assurance Company Limited Vs. Mr. T.Chelladurai, Tmt. D. Maragadam & C. Nivitha Varadhalakshmi (Madurai Bench), 2010 ACJ 382*, deceased was a student of final year Automobile Engineering Course. Tribunal considered the income of Rs. 4,500/- per month. Same was enhanced by the High Court of Tamil Nadu to Rs.7,000/- per month.

24. In the instant case, learned Tribunal took the minimum wages applicable to Graduate at the time of the accident, i.e., Rs.3,108/-. Since the injured was a Graduate Engineer and Director in one company, considering the above referred judgments, age, date of accident, exposure and health of the injured, I hold the income of the injured at Rs.12,000/- per month as claimed.

25. On the second issue, due to the accident, appellant's right leg was amputated, his right leg was fractured and was kept in cast. Appellant was under continuous treatment for three months, same was proved before the learned Tribunal, due to which he could not resume his work for about six months, I accordingly, award loss of income for six months.

26. On the issue of disability, injured produced a disability certificate Ex.PW2/1 before the learned Tribunal. As per the same, injured suffered more than 40% permanent disability. Accordingly, the learned Tribunal, while calculating the loss of future income on account of disability considered permanent disability of 40%.

27. Since the claim petition filed before the learned Motor Accidents Claim Tribunal, appellant cannot seek benefit of disability as per Workmen Compensation Act, 1923. Principles for fixing compensation under Motor Vehicles Act, 1988 and the Workmen Compensation Act, 1923 are altogether different.

28. So, on the issue of disability, I found that the learned Tribunal, while calculating the loss of future income, rightly considered the disability suffered by the injured. Accordingly, I am not inclined to interfere with the findings of the learned Tribunal on this ground.

29. Compensation on account of loss of future income of the injured is Rs.9,21,600/- $(12,000 \times 12 \times 16 \times 40\%)$ and Loss of income on account of leave is Rs.72,000/- $(12,000 \times 6)$.

30. In view of the above discussion, the compensation for the loss of future income is thus enhanced from Rs.4,64,371 to Rs.9,21,600/-, and compensation for the loss of income during treatment is enhanced from Rs.12,432/- to Rs.72,000/-, which comes to Rs.5,16,797 (Rs.4,57,229 + Rs.59,568) shall carry interest @ 7.5% *per annum* from the date of filing of the petition till the date of disposal of the instant appeal.

31. Consequently, respondent No.3/Insurance Company is directed to make the deposit of the aforesaid enhanced compensation within six weeks with the Registrar General of this Court, failing which Insurance Company would be liable to pay penal interest @ 12% per annum on delayed payment.

32. On deposit, the enhanced compensation amount shall be released in favour of the appellant.

33. Appeal is allowed on the above terms.

SURESH KAIT, J.

MAY 29, 2013

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