

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO 492/1999

Date of Decision : JUNE 22, 2009

SARIKA Appellant
Through : None.

versus

NARAIN SINGH Respondent
Through : None.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

1. The appellant has challenged the award of the learned Tribunal whereby compensation of Rs.2,10,000/- has been awarded to the appellant. The appellant seeks enhancement of the award amount.

2. On 15th December, 1989 at about 10:35 am, the appellant was

returning from her school on bicycle after the examination when she was hit by truck bearing No.DEL 3622 on Bal Udyan Marg, Janak Puri. The appellant was about 13 years old at that time and was studying in Class-VII.

3. The appellant's right leg was crushed under the truck. The appellant was initially taken to Chajju Ram Nursing Home which referred her to AIIMS where she underwent six surgeries and her right leg above knee was amputated. The appellant remained hospitalized for about six months and her permanent disability has been assessed to be 100% in relation to her right lower limb as per the disability certificate, Ex.PW1/A.

4. The learned Tribunal has awarded Rs.20,000/- towards medical expenses, Rs.10,000/- towards conveyance charges, Rs.10,000/- towards special diet, Rs.20,000/- towards pain and agony, Rs.1 lakh on account of marital status and Rs.50,000/- on

account of permanent disability. The total compensation awarded is Rs.2,10,000/-.

5. The learned counsel for the appellant has urged following grounds for enhancement at the hearing of this appeal:-

- (i) Compensation be awarded for implantation of the artificial limb.
- (ii) Compensation be awarded for loss of income due to permanent disability.
- (iii) Compensation for pain and sufferings be enhanced.
- (iv) Compensation for loss of amenities be awarded.
- (v) Compensation for permanent disability be enhanced.
- (vi) Compensation for marital status be enhanced.
- (vii) Compensation for medical treatment, conveyance and special diet be also enhanced.

6. During the pendency of this appeal, the appellant continued her education and completed Masters Degree in Computers. The appellant has produced the copy of the mark sheet of Masters in Computers Application awarded by Indira Gandhi National Open University. The appellant also desired to have the artificial limb implanted and was referred to M/s Endolite for examination of her condition for implantation of artificial leg. M/s Endolite submitted a quotation dated 6th May, 2009 before this Court giving the cost of artificial limb to be Rs.3,03,500/-.

7. Vide order dated 19th May, 2009, the appellant was permitted to lead additional evidence to prove her educational qualifications as well as the cost of the artificial limb to be implanted by M/s Endolite.

8. The witness from M/s Endolite appeared as PW-1 on 27th May, 2009 and deposed that the appellant has been examined by

them and the quotation for the implantation of artificial limb was proved as Ex.P-1 according to which the cost of implantation of the artificial limb is Rs.3,03,500/-.

9. The appellant also appeared as PW-2 and deposed that she has completed Masters in Computer Application in the year 2002. The mark sheet dated 4th March, 2003 is Ex.P-2. The appellant further deposed that she was unemployed and could not get any job because of the disability. The appellant also deposed that she was still unmarried and her matrimonial prospects have been diminished due to the accident in question. The appellant also deposed that she was unable to move by public transport because of the handicap and had to spend considerable amount on conveyance. The appellant could not have the artificial limb implanted earlier because the learned Tribunal did not award any amount towards the implantation of artificial limb.

10. The learned Tribunal has not awarded any compensation for implantation of the artificial limb. The learned counsel for the respondent submits that no amount was claimed for implantation of artificial limb before the learned Tribunal. In this regard, it is noted that the learned Tribunal ought to have conducted an enquiry into the claim under Section 168 of the Motor Vehicles Act instead of leaving the appellant to the mercy of the circumstances. The Claims Tribunals have been constituted to advance speedy remedy to the victims of the road accidents and, therefore, the duty has been casted on the Tribunals to conduct an enquiry. Section 169 of the Motor Vehicles Act provides that the Claim Tribunals shall follow such summary procedure as it thinks fit. Delhi Motor Vehicles Rules, 1993 provides the procedure to be followed by the Claims Tribunal. Rule 118 (7) provides that the Claim Tribunal may during the course of enquiry visit the place where the accident took

place or examine any person relevant to the proceedings. In the case of Saramma Scaria vs. Mathai, 2003 ACJ 213, the Kerala High Court observed as under:

"4. We may at the outset point out that the Tribunal cannot claim any credit in the manner in which the claim petition was disposed of. We find in very many cases Tribunals are dealing with the compensation claims lightly forgetting the purpose for which they have been constituted. Motor Accidents Claims Tribunals are constituted under the Act so as to advance speedy remedy to the injured as well as the legal heirs' of the deceased. Claimants are not seeking any charity but their legitimate right to get justice and adequate compensation for the tragedy befallen on them not due to their fault but due to the negligence of the other side. The Tribunal is bound to mitigate the hardship of the person injured and to save the family from penury. In N.K. V. Brothers (P) Ltd. v. M. Karumai Ammal, AIR 1980 SC 1354 Supreme Court has reminded the Claim Tribunals stating as follows:

"Road accidents are one of the top killers in our country, specially, when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of *res ipsa loquitur*. Accidents Tribunals must take

special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here and some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes.”

11. Considering the evidence of PW-1 and PW-2 and the quotation-Ex.P-1, Rs.3,03,500/- is awarded to the appellant for implantation of the artificial limb.

12. With respect to the loss of income due to the permanent disability, the learned Tribunal has not awarded any compensation. The appellant was studying in class 7th at the time of the accident. Despite the permanent disability, the appellant somehow completed the education and has obtained Degree in Computer Applications but she is not able to secure any job due to the permanent disability. The appellant has stated in her evidence before this Court that her other colleagues are earning to the tune of

Rs.20,000/- to Rs.25,000/- per month. Although there is no proof of the actual earning of the appellant, but considering the education and qualifications of the appellant, the earning capacity can be calculated. In the case of DTC vs. Sudarshan Yadav 1995 ACJ, 393, the victim was a qualified engineer and was studying in MBA second year at the time of the accident. The victim suffered a fatal accident in the year 1980. The learned Tribunal assessed the prospective dependency at Rs.1,000/- per month which was enhanced to Rs.2,000/- per month by the High Court. In the case of Hazi Zenullah Khan vs. Nayar Mahapalika, 1994 ACJ 1993, the deceased, a student of B.Sc. first year, suffered a fatal accident in the year 1971 and the compensation was awarded on the basis of his earning capacity.

13. Considering the facts and circumstances of this case and taking conservative view of the matter, the earning capacity of the

appellant in this case is taken to be Rs.6,500/- per month. The appellant was aged about 13 years at the time of the accident and applying the multiplier of 18, the loss of income is assessed to be Rs.14,04,000/-. The deceased has suffered 100% disability in relation to her right lower limb. However, considering the implantation of the artificial limb, the earning capacity of the appellant in relation to the entire body is taken to be 50%. The loss of earning capacity on the basis of 50% of the earning capacity is computed to be Rs.7,02,000/- (Rs.14,04,000/- divided by 2).

14. The learned Tribunal has awarded Rs.50,000/- towards permanent disability and Rs.20,000/- towards pain and agony to the appellant. No compensation has been awarded for loss of amenities of life. In the case of Virender Singh vs. Anand Prakash, FAO No.192/1990 decided on 6th August, 2007, this Court has awarded Rs.1,50,000/- towards pain and suffering, Rs.1,50,000/-

towards loss of amenities of life, Rs.50,000/- towards depression and mental stress in life and Rs.1,00,000/- towards loss of matrimonial prospects in respect of the victim who suffered 100% disability in a road accident dated 22nd November, 1980. Following the aforesaid judgment and considering the facts and circumstances of this case, the compensation for pain and suffering is enhanced from Rs.20,000/- to Rs.1,00,000/-. The compensation of Rs.50,000/- awarded for permanent disability is enhanced to Rs.1,00,000/- for loss of amenities of life and permanent disability.

15. The learned Tribunal has awarded Rs.1 lakh on account of marital status which is fair and reasonable and does not call for any interference.

16. The learned Tribunal has awarded Rs.20,000/- for purchase of medicines which appears to be low considering the six surgeries underwent by the appellant. However, in the absence of any

evidence with respect to the expenses on medical treatment, the award of Rs.20,000/- is not being interfered with.

17. The learned Tribunal awarded Rs.10,000/- for conveyance and Rs.10,000/- for special diet. The compensation of Rs.10,000/- towards special diet does not call for any interference. However, considering the 100% permanent disability of the right lower limb due to amputation of right leg, the compensation of Rs.10,000/- for conveyance is enhanced to Rs.30,000/-.

18. The total compensation payable to the appellant comes to Rs.16,24,000/- as per break up given hereunder:-

- 1) Expenses on account of Treatment/purchase of medicine - Rs.20,000/-
- 2) Expenses on account of conveyance charges - Rs.30,000/-
- 3) Expenses on account of special diet - Rs.10,000/-
- 4) Expenses on account of pain and suffering - Rs.1,00,000/-
- 5) Expenses on account of - Rs.1,00,000/-

	marital status		
6)	Expenses on account of loss of amenities of life and for permanent disability	-	Rs.1,00,000/-
7)	Compensation for loss of income	-	Rs.7,02,000/-
8)	Compensation towards cost of artificial limb	-	Rs.3,03,500/-
		Total	- Rs.13,65,500/-

19. The aforesaid amount of compensation is higher than the amount claimed which is permissible in law in view of the judgment in the case of Nagappa vs. Gurudayal Singh, AIR 2003 SC 674 where the Hon'ble Supreme Court has held that claimants are entitled to just compensation and they can be awarded higher compensation than the compensation claimed.

20. The appeal is accordingly allowed and the award amount is enhanced from Rs.2,10,000/- to Rs.13,65,500/-

21. The learned Tribunal has awarded interest @12% per annum

which is not disturbed on the original award amount of Rs.2,10,000/-. There shall be no interest on the cost of Rs.3,03,500/- towards the implantation of artificial limb as the same has yet to be implanted. There shall also be no interest on the loss of income as the appellant has completed her education in 2002. However, on the remaining enhanced amount of Rs.1,50,000/- towards compensation for pain and suffering, loss of amenities of life and conveyance, the appellant shall be entitled to interest @7.5% from the date of filing of the petition till date of payment.

22. The respondent is directed to deposit the entire enhanced amount along with interest with this Court within 40 days.

23. With respect to the disbursement of the award amount, the order shall be passed on the next date of hearing.

24. Vide order dated 19th May, 2009, notice was issued to the Government of NCT of Delhi to place on record the present status

of the Draft Delhi Motor Accident Claims Tribunal Rules. Mr. V.K. Tandon, Advocate for Government of NCT of Delhi submits that the Draft Delhi Motor Accident Claims Tribunal Rules were published in the Delhi Gazette on 3rd September, 2008 and the objections/suggestions were invited in pursuance to which the Delhi Police has submitted some suggestions on 3rd March, 2009 and the Draft Rules are pending for approval before the Cabinet of the Delhi Government. Mr. Tandon further submits that the Rules shall be notified after the approval by the Cabinet.

25. It is noted that the Draft Rules were drafted in the year 1998 by the Registrar (Vigilance) of this Court, who was the Motor Accidents Claims Tribunal from 1996 to 1998 and the same were sent by this Court to the Commissioner (Transport), Government of NCT of Delhi on 3rd March, 1999. The Draft Rules were initially published in Delhi Gazette on 16th August, 2001 inviting objections

from the public but despite a lapse of more than 8 years thereafter, the Rules have not yet been notified.

26. Be that as it may, the Government of NCT of Delhi is advised to expedite the consideration of the said Rules and the same may be notified as expeditiously as possible preferably within a period of four weeks. Some of the suggestions of this Court to be incorporated in the Rules are as under:-

(i) In Form A under Rules 3, 5 and 7, the following paragraphs be added:-

“15. In case of death: Names and addresses of the next of kin of the deceased.

16. In case of injury: Nature of injuries suffered.

17. Names and addresses of the eye-witnesses.

18. In case of transport vehicles:

(i) Particulars of the permit.

(ii) Particulars of the fitness certificate”.

(ii) New Rule 3 (1) (h):-

"The Investigating Officer shall produce the driver, owner and eye-witnesses of the accident before the Motor Accident Claims Tribunal along with the Report under Section 158 (6) of the Motor Vehicles Act or on the subsequent date whereupon the Tribunal shall record their statement relating to the driving licence, registration cover, insurance policy, fitness, permit etc. of the offending vehicle."

(iii) New Rule 14(2a) and 14(2b):-

"14(2a). On receipt of the notice from the Claims Tribunal along with the Accident Information Report and the accompanying documents, the Insurance Company shall immediately appoint an investigator to ascertain the age, income, occupation and number of dependents of the deceased victim in death cases and the age, occupation, income, nature of injuries and likely expenditure on treatment in injury cases. The investigator shall also verify the Driving Licence of the driver of the offending vehicle."

14(2B). "The Insurance companies shall file the written statement before the Claims Tribunal within 30 days of receipt of notice. The reply shall contain the following particulars:-

(i) Age, occupation and number of dependants of the deceased in death cases and age, occupation, income and nature of injuries and likely expenditure on treatment in injury cases;

- (ii) Computation of compensation according to the insurance company; and
- (iii) Disclosure Statement about the settlement of own damage claim of the offending vehicle.
- (iv) Defences under Section 149 of the Motor Vehicles Act and material in support of the defences as verified by their investigator.
- (v) If no defence under Section 149 of the Motor Vehicles Act is available in a given case, the Insurance Company shall deposit the admitted amount of liability along with the reply before the Claims Tribunal.
- (vi) Name and designation of the officer who has examined the case and on whose instructions the reply has been filed."

27. The suggestions (i) and (ii) have already been accepted by the Delhi Police in FAO No.842/2003 which is recorded in their affidavit dated 3rd June, 2009 and the order dated 8th June, 2009.

28. The Delhi Motor Accident Claims Tribunal Rules, 2008 shall streamline the procedural law relating to the compensation to the victims of the road accident and, therefore, the expeditious notification of the same is in public interest.

29. Copy of this order as well as the order dated 8th June, 2009 and the affidavit of Delhi Police dated 3rd June, 2009 in FAO No.842/2003 be furnished to Mr. V.K. Tandon, Advocate under signatures of Court Master.

30. Copy of this order be given 'Dasti' to learned counsel for the parties under signatures of Court Master.

31. Renotify for 8th July, 2009.

J.R. MIDHA, J

JUNE 22, 2009

