

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

**MAC.APP.No.76/2005**

Reserved on : 28<sup>th</sup> January, 2009

Date of decision: 31<sup>st</sup> March, 2009

SHER SINGH ..... Appellant  
Through : Mr. Sanjiv Sharma, Amicus Curiae.

versus

NARESH KUMAR & ORS. .... Respondents  
Through : Mr. A.K. Soni, Adv. for R-3.

**CORAM :-**

**THE HON'BLE MR. JUSTICE J.R. MIDHA**

1. The appellant has challenged the award dated 28<sup>th</sup> September, 2004 passed by the learned Tribunal whereby compensation of Rs.31,000/- has been awarded to him. The appellant seeks enhancement of the award amount.

2. On 28<sup>th</sup> February, 1999, the appellant and his son were travelling in a rickshaw cycle from Mangolpuri for taking a bus to New Delhi Railway Station when Jeep No.DL-8C B8918 came from

the opposite direction and hit the rickshaw resulting in serious injuries to the appellant. The appellant was taken to Sanjay Gandhi Memorial Hospital and thereafter shifted to Military Hospital, Delhi Cant. He remained hospitalized till 10<sup>th</sup> June, 1999. The appellant was also treated at All India Institute of Medical Sciences. The appellant suffered permanent disability of 25% of left lower limb due to post traumatic deformity of left lower limb with restricted range of motion of left hip joint.

3. The appellant was 43 years of age at the time of the accident and was working as Hawaldar in Indian Army earning Rs.10,500/- per month. The appellant was retired from the Army on 31<sup>st</sup> March, 2001. The appellant claims to have been retired as he became unfit for Army service. The appellant further claims that but for the disability suffered in accident, he would have continued working and would have got promotion to the post of Naib Subedar and then Subedar and so on. The appellant is now drawing a pension of Rs.2275/- per month. The appellant further claims that he would

have got a civil job after retirement but due to disability, he is unable to do any work.

4. At the trial of this case, the appellant appeared as PW—1 and proved the disability certificate, Ex.P-1. The appellant also produced three other witnesses. PW – 2, Clerk of Sanjay Gandhi Memorial Hospital proved the MLC - Ex.PW.2/1. PW – 3, Head Constable, Yogender from P.S. Sultanpuri proved the FIR - PW3/1. PW—4, Shankar Lal is the eye witness of the accident.

5. The learned Tribunal awarded Rs.31,000/- as compensation along with interest @5% per annum to the appellant. The break-up of Rs.31,000/- is as under:-

- (i) Rs.5,000/- towards medical expenses.
- (ii) Rs.500/- towards special diet.
- (ii) Rs.500/- towards conveyance.
- (ii) Rs.25,000/- towards pain and suffering and loss of amenities.

6. The appellant has challenged the impugned award on the following grounds:-

- (i) Enhancement of medical expenses, special diet, conveyance and attendant.
- (ii) Award of compensation of loss of earning capacity.
- (iii) Award of compensation towards loss of income during treatment.
- (iv) Enhancement of compensation for pain and suffering.
- (v) Enhancement of compensation for loss of amenities.

7. With respect to appellant's claim of medical expenses, special diet, conveyance and attendant, the appellant appeared in witness box as PW-1 and stated that his family came to Delhi to stay when he was hospitalized. He stated that he spent on medicines when he was on sick leave for eight weeks. However, no proof of medical expenses has been given by the appellant. It appears that the medical expenses of the appellant were borne by the Army. However, considering that the family of the appellant came from outside (the appellant is a permanent resident of District Champawat, Uttranchal) to stay and would have incurred some amount on conveyance, diet etc., the amount of Rs.6,000/- awarded

by the learned Tribunal for medical expenses, special diet and conveyance is enhanced to Rs.10,000/-.

8. The appellant suffered 25% disability which has reduced his earning capacity and, therefore, he claims compensation on this account. The appellant was earning Rs.10,500/- per month when he retired from Army on 31<sup>st</sup> March, 2001. He is drawing a pension of Rs.2,275/- per month and after deducting the same from the salary, the net loss comes to Rs.8,225/-. Considering his age at the time of accident, it would be appropriate to apply a multiplier of 15. However, the appellant would be entitled only to 25% of the amount he would have earned for 15 years. The amount, accordingly, comes to Rs.3,70,125/- (Rs.8,225/- X 12 X 15 X 0.25).

9. With respect to the claim towards loss of income during treatment, no evidence has been rendered by the appellant on this account. It appears that the appellant has received full salary during the treatment. The counsel for the appellant submits that even if the appellant has received full salary, he is entitled to loss of income

during treatment. I do not agree with this contention and reject the same.

10. The appellant has challenged that the amount awarded by the Tribunal towards pain and suffering and loss of amenities to be very meager. The appellant remained hospitalized for more than four months and has been 25% disabled and, therefore, he claims compensation of at least Rs.1,00,000/- towards permanent disability and Rs.1,00,000/- towards pain and suffering and loss of amenities.

11. The learned amicus curiae refers to and relies upon the following judgments : -

(i) ***M/s Concord of India Insurance Co. Ltd. vs. Nirmala Devi - 1980 A.C.J. 55.***

In this case, the Apex Court observed that determination of quantum must be liberal and not niggardly since law values life and limb in a free country in generous scales.

(ii) ***R.D. Hattangadi vs. Pest Control (India) Pvt. Ltd. - 1995 A.C.J. 366.***

In this case, the appellant was Judge in City Civil Court for some time till he resigned in 1964 and was thereafter practicing as a lawyer at the time of the accident in the year 1980. The appellant suffered 100% disability. The learned Tribunal awarded

Rs.26,25,992/- which was reduced by the High Court to Rs.8,57,352/- against which the appellant approached the Hon'ble Supreme Court. The Hon'ble Supreme Court discussed the entire law relating to the computation of compensation in injury cases in paras 9,11,12,,13 and 14 of the said judgment.

The Hon'ble Supreme Court awarded Rs.1,50,000/- towards pain and suffering and Rs.1,50,000/- in respect of the loss of amenities of life apart from the other heads in respect of the injuries resulting in paraplegia below the waist and total disability to the appellant. It was also held that while computing the compensation for non-pecuniary loss, while following the precedents, where conventional amount has been awarded, the fall in value of money should be kept in mind.

(iii) ***Rattan Lal Mehta vs. Rajinder Kapoor - 1996 A.C.J. 372.***

The Division Bench of this Court discussed at length the principles for computation of compensation in injury cases. The learned counsel has laid emphasis on paras 6,7,11,12,15,16,17,18,19,23,25,26 and 29 of the judgment, especially para 23 of the judgment where it is held that conventional figures for non-pecuniary damages must keep pace with the times and take into account inflation and advances in science, medicine and rehabilitation. The learned counsel further lays special emphasis on para 28(vi) of the judgment where the Division Bench has held that non-pecuniary damages cannot be kept low because pecuniary damages are high.

(iv) ***Shshendra Lahiri vs. UNICEF - 1998 ACJ 859.***

This case relates to multiple injuries suffered by the appellant in an accident in the year 1977 resulting in several fractures and bone grafting was to be done. The appellant suffered permanent

disability of shortening of right leg by three inches. The Tribunal awarded only Rs.33,000/- which was enhanced to Rs.58,000/- by the High Court. The Hon'ble Supreme Court enhanced the award amount to Rs.4,00,000/-. The judgment shows the liberal approach in awarding the compensation.

(v) ***Swatantra Kumar vs. Qamar Ali - 1998 ACJ 920.***

This case relates to the injuries resulting in shortening of leg by 1.75 inches. The Hon'ble Supreme Court increased the award by Rs.1,00,000/-.

(vi) ***Lata Wadhwa & Ors. vs. State of Bihar - (2001) 8 SCC 197.***

In this case, burn injuries to the extent of 10% were suffered by some of the claimants. The Apex Court after discussing the principles for grant of compensation awarded a lump sum amount of Rs.2,00,000/- to each of those persons. The Court observed as under:-

"In examining the question of damages for personal injury, it is axiomatic that pecuniary and non-pecuniary heads of damages are required to be taken into account. In case of pecuniary damages, loss of earning or earning capacity, medical, hospital and nursing expenses, the loss of matrimonial prospects, if proved, are required to be considered. In the case of non-pecuniary losses, loss of expectation of life, loss of amenities or capacity for enjoying life, loss or impairment of physiological functions, impairment or loss of anatomical structures or body tissues, pain and suffering and mental suffering are to be considered.

(vii) ***K. Narasimha Murthy vs. Manager, Oriental Insurance Co. Ltd. - 2004 ACJ 1109.***

In this case, the claimant was a Constable in CRPF who suffered multiple fracture of both legs in an accident dated 21<sup>st</sup> April, 1996 resulting in 54% permanent disability in respect of the whole body. The Tribunal awarded Rs.1,48,200 against which the matter came in appeal before the Karnataka High Court. The Division Bench discussed the entire law relating to computation of compensation in injury cases in paras 16,17,18,20,21,22,33,38,40 and 41 of the judgment and computed the compensation at Rs.14,00,000/-. The High Court awarded Rs.1,00,000/- for loss of amenities of life, frustration, disappointment, unhappiness and inconvenience, Rs. 10,80,000/- towards loss of future income, Rs.50,000/- towards pain and suffering, Rs.55,800/- towards attendant charges and travelling expenses, Rs.20,000/- towards special diet, Rs. 76,320/- towards loss of income and Rs.20,000/- towards future medical expenses. For computing the compensation for loss of future income, the Division Bench applied a multiplier of 15 in respect of the claimant aged 31 years.

(viii) ***Saurabh Kumar vs. Naresh Kumar - 2007 (3) T.A.C. 420 (Del.)***

This case relates to the accident dated 9<sup>th</sup> January, 2003 resulting in amputation of right leg above knee of a child aged 13 years. The permanent disability was assessed at 80%. The learned Tribunal awarded Rs.3,18,000/- against which the matter came up in appeal before this court. This Court enhanced the non-pecuniary damages from Rs.1,00,000/- to Rs.3,00,000/- under the head of pain and suffering and loss of future enjoyment of life.

(ix) ***Oriental Insurance Co. Ltd. vs. Satish Sharma - 2007 (4) T.A.C. 921 (Del.)***

This case relates to accident dated 30<sup>th</sup> November, 2003 resulting in amputation of right leg below knee of a young man aged 26 years resulting in 60% permanent disability. The learned

Tribunal awarded 10,34,850/- against which the matter came up in appeal in this court. This Court referred to and relied upon the previous judgments in which the non-pecuniary damages to the tune of Rs.2,80,000/- to Rs.4,00,000/- were awarded for non-pecuniary damages. After discussing the said judgments in para 16, this Court held that between years 1985 to 1990, the Courts have awarded about Rs.3,00,000/- under the head of non-pecuniary damages for amputation of leg resulting in permanent disability of 50% and above. Following the said judgments, this court upheld the award of non-pecuniary damages of 3,25,000/- to the claimant under the head of non-pecuniary damages.

(x) ***Oriental Insurance Co. Ltd. vs. Vijay Kumar Mittal -2008 ACJ 1300.***

In this case, the claimants suffered serious injuries in a road accident dated 13<sup>th</sup> June, 2001 resulting in amputation of right leg below knee and the permanent disability was assessed at 60%. The Tribunal awarded Rs.9,39,045/- against which the matter came up in appeal before this court. This court again examined the previous cases resulting to the non-pecuniary damages for amputation of leg and held that Rs.2,50,000/- awarded to the claimant to be fair and reasonable.

12. Considering the judgments cited above, I find that the Courts have awarded compensation for pain and suffering and for loss of amenities as separate heads. In the present case, the appellant has suffered 23% disability. It would, therefore, be appropriate to award Rs.25,000/- towards pain and suffering and Rs.25,000/- towards loss of amenities.

13. The total amount payable to the appellant is as under: -

1. Medical expenses, special diet - and conveyance. Rs.10,000/-
2. Loss of earning capacity - Rs.3,60,000/-
3. Non-pecuniary damages towards pain and suffering - Rs.25,000/-
4. Non-pecuniary damages towards loss of amenities - Rs.25,000/-

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**Total** - Rs.4,20,000/-  
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14. The last contention of the appellant's counsel is that the learned Tribunal has awarded very low interest of 5%. It should be at least 12%. Considering the latest pronouncement of the Hon'ble Supreme Court in the case of **Dharmapal & Ors vs. U.P. State Road Transport Corporation, III 2008 ACC 1 SC**, I allow interest at the rate of 7.5% per annum.

15. This appeal is allowed. The award is enhanced from Rs,31,000/- to Rs.4,20,000/- along with interest @7.5% per annum w.e.f. the date of filing of the petition till the date of payment. No costs.

16. The enhanced amount along with interest be deposited by the respondent with the learned Tribunal within 30 days. The learned Tribunal is directed to release 30% of the amount to the appellant and remaining 70% of the amount be kept in a fixed deposit for a period of ten years on which no loan, advance or withdrawal be permitted without the prior permission of the learned Tribunal but the periodical interest be permitted be released to the appellant. The learned Tribunal shall first release the cheque towards the amount to be kept in fixed deposit and the remaining amount be released only after the original fixed deposit receipt with proper endorsement is shown to the learned Tribunal and the copy of the FDR duly attested by the Bank is placed on record of the learned Tribunal.

17. I would like to record that this case was taken up on 20<sup>th</sup> January, 2009 when it was noted that the counsel for the appellant had not been appearing since July, 2007. The appellant is permanently staying at Uttranchal and he visited Delhi only to appear in this case. The appellant expressed his helplessness due to

the continuous non-appearance of his lawyer. I, therefore, appointed Mr. Sanjiv Sharma, Advocate, who was present in Court as amicus curiae to assist this Court. Mr. Sanjiv Sharma, Advocate rendered very effective assistance to this Court and I place on record my appreciation for his services. Mr. A.K. Soni, Counsel for respondent No.3, also effectively assisted in this matter.

**J.R. MIDHA, J**

**MARCH 31, 2009**