

(2010) 10 DEL CK 0052

Delhi High Court

Case No: M.A.C. App. No. 90 of 2009

Sushil Kumar

APPELLANT

Vs

Oriental Insurance Co. Ltd.

RESPONDENT

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**Date of Decision:** Oct. 1, 2010**Citation:** (2011) 1 TAC 73**Hon'ble Judges:** J.R. Midha, J**Bench:** Single Bench**Advocate:** Sandeep Thakur, for the Appellant; Tarkeshwar Nath and Saurabh Kumar Tuteja, for the Respondent

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### Judgement

J.R. Midha, J.

The Appellant has challenged the award of the learned Tribunal whereby compensation of Rs. 77,986/- has been awarded to the Appellant. The Appellant seeks enhancement of the award amount.

2. The accident dated 26th April, 2005 resulted in grievous injuries to the Appellant. The Appellant was going on his motorcycle from Seelam Pur to I.S.B.T., Kashmere Gate when he was hit by truck bearing No. HR-38F-5815.

3. The Appellant sustained fracture in his right thigh, left leg, neck bone and lacerated wound on his left hand. He was shifted to Sushruta Trauma Centre where he remained till 29th April, 2005 and from there he was shifted to LNJP Hospital where he remained till 17th May, 2005. The Appellant was operated upon in LNJP Hospital where a rod was inserted in his right thigh and the plaster was applied on his left leg which was removed after three months. Stitches were applied on his left hand and a neck collar was provided for treating the injuries caused to the neck. The learned Tribunal has awarded Rs. 17,173/- towards expenditure on medicines, Rs. 20,813/- towards loss of wages, Rs. 30,000/- towards pain and suffering and Rs. 10,000/- towards conveyance charges and special diet. The total compensation awarded is Rs. 77,986/-.

4. Vide order dated 20th January, 2010, the Appellant was directed to be examined by the Board to determine the permanent disability in pursuance to which the Medical Superintendent, Aruna Asaf Ali Government Hospital constituted the Board which examined the Appellant and issued a disability certificate certifying that the Appellant has suffered 20% permanent disability in respect of right lower limb.

5. The learned Counsel for the Appellant has urged the following grounds at the time of hearing of this appeal:

(i) Compensation be awarded for loss of earning capacity due to permanent disability.

(ii) Compensation for loss of income during treatment be enhanced.

(iii) Compensation for future medical expenses be awarded.

(iv) Compensation for conveyance and special diet.

(v) Compensation for pain and suffering be enhanced.

(vi) Compensation for loss of amenities and disfiguration be awarded.

(vii) The rate of interest be enhanced from 7% per annum to 7.5% per annum.

6. The Claims Tribunal has not awarded any compensation for loss of earning capacity due to permanent disability as the permanent disability certificate had not been issued at that time. The Appellant has been examined by the medical board constituted by Aruna Asaf Ali Government Hospital in pursuance to the order dated 20th January, 2010 and the permanent disability of the Appellant has been assessed to be 20% in relation to right lower limb vide disability certificate dated 15th March, 2010 which is on record. The Appellant is, therefore, entitled to loss of earning capacity due to permanent disability of 20%.

7. The Appellant was working as a driver at the time of the accident and was driving a LMV but after the accident he cannot bend his right leg and is, therefore, unable to drive any vehicle. The Appellant is present in Court and he walks with the support of the stick. The learned Counsel for the Appellant submits that the loss of earning capacity of the Appellant be taken as 100% as he cannot drive any vehicle now. The Appellant who is present in Court submits that he is now running a tea shop. Considering that the Appellant is now working, his loss of earning capacity due to the permanent disability is taken to be 20%. The Claims Tribunal has taken the minimum wages of Rs. 3,468.90 as the income of the Appellant. However, the increase in minimum wages due to inflation and rise in price index has not been taken into consideration. It is well settled by catena of judgments of this Court in the cases of [Kanwar Devi and Others Vs. Bansal Roadways and Others](#), , [National Insurance Company Ltd. Vs. Renu Devi and Others](#), and [UPSRTC v. Munni Devi, MAC](#). App. No. 310/2007 decided on 28th July, 2008 that the Court should take judicial notice of increase in minimum wages to meet the increase in price index and

inflation rate. The Court has taken the view that the minimum wages get doubled over the period of 10 years and increase in minimum wages is not akin to future prospects. Following the aforesaid judgments, the income of the Appellant is taken to be Rs. 5,203.35 [(Rs. 3,468.90 + Rs. 6937.80)/2]. The Appellant was aged 38 years at the time of the accident. Applying the multiplier of 15 as per the judgment of the Hon'ble Supreme Court in the case of [Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another](#), and taking 20% of the same, the loss of earning capacity of the Appellant is computed to be Rs. 1,87,320.60 [20% of (Rs. 5,203.35 x 12 x 15)].

8. With respect to the loss of income during treatment, the Claims Tribunal has awarded compensation for a period of six months. Since the Appellant remained under treatment for a period of six months, the compensation for loss of wages during treatment does not warrant any enhancement.

9. With respect to expenditure on future treatment, it is noted that a rod was inserted in the right thigh of the Appellant for which the Appellant would require a surgery in future for removal of the rod. The Appellant has deposed with respect to the same in his evidence before the Claims Tribunal. The Appellant also deposed that the said operation in future would cost Rs. 25,000 to Rs. 30,000/- and during that period, he would again be confined to bed for about 2-3 months. The Claims Tribunal has not awarded any compensation on this account. Rs. 25,000/- is awarded to the Appellant towards surgery which he would require in future and Rs. 15,000/- is awarded towards his confinement to bed after the surgery. The total compensation towards future treatment and loss of wages on that account is computed to be Rs. 40,000/-.

10. The Claims Tribunal has awarded Rs. 30,000/- towards pain and suffering which is on a lower side considering the permanent disability of 20% suffered by the Appellant. The Claims Tribunal has also not awarded any compensation for loss of amenities of life and disfiguration. In the facts and circumstances of this case, the compensation towards pain and suffering is enhanced from Rs. 30,000/- to Rs. 40,000/-. Rs. 40,000/- is awarded towards loss of amenities of life and Rs. 25,000/- is awarded towards disfiguration.

11. The Claims Tribunal has awarded Rs. 10,000/- towards conveyance charges and special diet. The Appellant remained under treatment for about six months. The Appellant has deposed in the witness box that he had to visit hospital during the period of treatment for physiotherapy and he used to commute by three wheeler. The Appellant has suffered permanent disability of 20% and a rod has been inserted in his leg and is unable to walk without a stick. Considering the condition of the Appellant, compensation of Rs. 10,000/- awarded by the Claims Tribunal towards conveyance and special diet is enhanced to Rs. 20,000.

12. The Appellant is entitled to total compensation of Rs. 3,73,133.60, the breakup of which is as under:

Compensation for loss of earning capacity	Rs. 1,87,320.60
Compensation for loss of wages	Rs. 20,813.00
Compensation for future treatment and rehabilitation	Rs. 40,000.00
Compensation for pain and suffering	Rs. 40,000.00
Compensation for loss of consortium	Rs. 40,000.00
Compensation for disfigurement	Rs. 25,000.00
Compensation for mental harassment and special expenses	Rs. 20,000.00
<b>TOTAL</b>	<b>Rs. 3,73,133.60</b>

13. The appeal is allowed and the award amount is enhanced from Rs. 77,986/- to Rs. 3,73,133.60. The Claims Tribunal has awarded interest @ 7% per annum which is enhanced to 7.5% per annum following the judgment of the Hon"ble Supreme Court in the case of Dharampal and Ors. v. U.P. State Road Transport Corporation III 2008 A.C.C. S.C.: 2008 (3) T.A.C. 789.

14. The enhanced award amount alongwith interest be deposited by the Respondent with State Bank of India A/c Sushil Kumar Tis Hazari Court Branch through Mr. H.S. Rawat, Relationship Manager, Tis Hazari Branch, Tis Hazari (Mb: 09717044322) within 30 days.

15. Upon the aforesaid amount being deposited, the State Bank of India is directed to release 10% of same to the Appellant 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% of the amount for a period of one year.
- (ii) Fixed deposit in respect of 10% of the amount for a period of two years.
- (iii) Fixed deposit in respect of 10% of the amount for a period of three years.
- (iv) Fixed deposit in respect of 10% of the amount for a period of four years.
- (v) Fixed deposit in respect of 10% of the amount for a period of five years.
- (vi) Fixed deposit in respect of 10% of the amount for a period of six years.
- (vii) Fixed deposit in respect of 10% of the amount for a period of seven years.
- (viii) Fixed deposit in respect of 10% of the amount for a period of eight years.
- (ix) Fixed deposit in respect of 10% of the amount for a period of nine years.

16. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of the Appellant.
17. Withdrawal from the aforesaid account shall be permitted to the Appellant after due verification and the Bank shall issue Photo Identity Card to the Appellant to facilitate identity.
18. No cheque book be issued to the Appellant without the permission of this Court.
19. The Bank shall issue Fixed Deposit Pass Book instead of the FD Rs to the Appellant and the maturity amount of the FD Rs be automatically credited to the Saving Bank Account of the beneficiary at the end of the FD Rs.
20. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.
21. Half yearly statement of account be filed by the Bank in this Court.
22. On the request of the Appellant, the Bank shall transfer the Savings Account to any other branch according to the convenience of the Appellant.
23. The Appellant shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. H.S. Rawat, Relationship Manager, Tis Hazari Branch, Tis Hazari (Mb: 09717044322).
24. List for compliance on 3rd December, 2010.
25. Copy of the order be given dasti to Counsel for both the parties under the signatures of the Court Master.
26. Copy of this order be also sent to Mr. H.S. Rawat, Relationship Manager, Tis Hazari Branch, Tis Hazari (Mb: 09717044322) under the signature of Court Master.