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**(2012) 05 DEL CK 0639**

**Delhi High Court**

**Case No:** MAC. APP. No. 603 of 2010

Brijesh Gupta

APPELLANT

Vs

Vijender Kumar and Others

RESPONDENT

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**Date of Decision:** May 10, 2012

**Hon'ble Judges:** G.P. Mittal, J

**Bench:** Single Bench

**Advocate:** Navneet Goyal and Ms. Suman N. Rawat, for the Appellant; Rameeza Hakeem with Mr. Prayadarshi Gopal and Mr. Rajat Brar, Advocates for the Respondent No. 3, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

G.P. Mittal, J.

The Appeal is for enhancement of compensation of Rs. 1,18,000/- awarded to the Appellant for having suffered injuries in an accident which occurred on 13.06.2007. In the absence of any Appeal by the owner, driver or the Insurance Company, the finding of negligence has become final between the parties.

2. The compensation of Rs. 1,18,000/- awarded under various heads is tabulated hereunder:

Sl.No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Medical Expenses	Rs. 85,000/-
2.	Conveyance	Rs. 5,000/-
3.	Special Diet	Rs. 3,000/-
4.	Pain and Sufferings	Rs. 25,000/-
	Total	Rs. 1,18,000/-

3. The following contentions are raised on behalf of the Appellant:

- (i) No compensation was awarded towards loss of income; although the Appellant could not attend to his work for a period of more than six months.
- (ii) The compensation awarded towards pain and suffering is very meager.
- (iii) No compensation was awarded towards loss of amenities.

4. On the other hand, it is urged on behalf of the Respondent No. 3 Insurance Company that the Appellant was unsuccessful to prove that he was working in any provision store and, therefore, the Claims Tribunal rightly declined to grant any loss of income to the Appellant. It is contended that the compensation of Rs. 25,000/- awarded towards the pain and suffering was sufficient which covered the head of loss of amenities.

5. It was proved on record that immediately after the accident on 13.06.2007, the Appellant was removed to Sanjay Gandhi Memorial Hospital. For lack of adequate medical attention, he got himself shifted to Jaipur Golden Hospital. It is proved from the discharge summary Ex.PW1/1 that the Appellant remained admitted in Jaipur Golden Hospital from 14.06.2007 to 19.06.2007. He suffered fracture of tibia and fibula of right leg apart from multiple injuries all over his body. During this period of hospitalization, the Appellant underwent surgeries and operations were conducted on both legs and steel rods were inserted in right leg and steel plates were inserted in left leg. There was delayed union of fracture of tibia, therefore, the Appellant had to be admitted in Parnami Orthopaedic Hospital on 20.11.2007. Bone graphing was done and he was discharged from the Hospital on 23.11.2007. The medical and fitness certificate issued by Dr. Manoj Sharma of Jaipur Golden Hospital shows that he was advised bed rest for a period of five months with effect from the date of the accident.

6. It is true that the Appellant has been paid compensation for all the amounts spent on his treatment in Jaipur Golden Hospital, in Parnami Orthopaedic Hospital and for purchase of medicines. It was established on record that the Appellant was advised bed rest for a period of five months. It can, therefore, be assumed that the Appellant was unable to resume his work at least for a period of six months. The Appellant was unable to prove that he was working in a provision store. In this view of the matter, the Claims Tribunal ought to have awarded loss of income to the Appellant on the basis of the minimum wages as per his qualification. The minimum wages of a matriculate on the date of the accident was Rs. 3,918/-. I would thus award a sum of Rs. 23,508/- ( Rs. 3918 X 6) towards the loss of income.

7. As stated earlier, it is proved on record that the Appellant underwent successive surgeries. He remained admitted in three Hospitals for different duration of time and was under prolonged treatment because of the nature of injuries suffered by him. It is difficult to measure the pain and suffering in terms of money which has been suffered by the claimant on account of serious injuries caused to him in a motor accident. Since the compensation is required to be paid for pain and suffering

an attempt must be made to award compensation which may have some objective relation with the pain and suffering underwent by the victim of a motor accident. For this purpose, the Claims Tribunal and the Courts normally consider the nature of injury; the parts of the body where the injuries were sustained; surgeries (if any) underwent by the victim; confinement in the hospital and the duration of the treatment. In the circumstances, the compensation of Rs. 25,000/- awarded towards pain and suffering was inadequate. Considering the nature of injuries, surgeries underwent, period of hospitalization and duration of treatment, the same is enhanced to Rs. 40,000/-.

8. The Appellant remained confined to bed for a period of five months. He was deprived of all the amenities during this period. The Appellant recovered from the injuries without any permanent disability. In the circumstances, I would award him a compensation of Rs. 10,000/- towards loss of amenities.

9. Thus, there is a total enhancement of Rs. 48,508/- which shall carry interest @ 7.5% per annum from the date of the filing of the Petition till its deposit.

10. The Respondent No. 3 Bajaj Allianz General Insurance Co. Ltd. is directed to deposit the enhanced amount of Rs. 48,508/- along with interest in the name of the Appellant in the UCO Bank, Delhi High Court Branch within six weeks.

11. 50% of the amount shall be held in Fixed Deposit for a period of two years. Rest of the amount shall be released immediately on deposit. The Appeal is allowed in above terms.