

(2001) 04 DEL CK 0128

Delhi High Court

Case No: LPA 37/97

Shri Arun Sondhi

APPELLANT

Vs

Delhi Transport
Corporation

RESPONDENT

Date of Decision: April 9, 2001

Citation: (2001) 1 ACC 615 : (2001) ACJ 1779 : (2001) 4 AD 133 : (2001) 91 DLT 17

Hon'ble Judges: M.S.A. Siddiqui, J; B.A. Khan, J

Bench: Division Bench

Advocate: Mr. Prashant Sharma, for the Appellant; Ms. Manisha Tyagi, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Khan, J.

Appellant, Arun Sondhi, 21, a B.A. Final year student in St. Stephens College, Delhi was seriously injured in road accident on 4.3.1983 when his cycle was hit by a DTC bus. His one leg was amputated and the other paralysed. He became paraplegic because of multiple injuries received by him and his permanent disability was assessed at 100%. He filed Claim suit No. 127/83 and claimed a compensation of Rs. 35 lacs. Respondent contested this amongst others on the ground that no DTC bus was involved in the accident. Tribunal rejected respondent's stand on this and estimated his feature earning at Rs.2000/- a month and applied a multiplier of 16 to it to assess the loss of his earning at Rs.3.84 lacs. It also awarded Rs. 1 lac for pain and suffering and loss of amenities and enjoyment of life, Rs. 2.25 lacs or so for medical treatment at Sweden and here, Rs.10,000/- for conveyance and Rs. 4,375/- for special diet and awarded total compensation of Rs.7.20 lacs with 12% interest vide Award dated 1.9.1994.

2. Both sides filed appeals against this Award which were disposed off by common judgment dated 20.12.1996 by First Appellate Court. Appellant's appeal was allowed and compensation enhanced to Rs.8,68,781/- and that of respondent was dismissed.

While doing so First Appellate Court increased compensation to Rs. 2 lacs for pain suffering and assistance and applied maximum multiplier of 18 to the multiplicand of Rs.2000/- to raise the loss of earning to Rs.4,32,000/-.

3. Appellant feels dis-satisfied and has filed this appeal for further enhancement. His counsel Mr. Dhanda submitted that appellant was the captain of this college boxing team and member of its Football X and had bright future as he came from a well educated and well placed family. Therefore, his future income could not be restricted to Rs. 2000/- a month. He contended that being a bright Sportsman, he had a reasonable prospect of being suitably employed and the reasonable potential to go up the ladder in his career and to earn an average monthly income of Rs.10,000/- a month. He also complained that FAC had awarded less for the pain and suffering undergone by him and the loss of amenities of life. He claimed that Appellant had lost control even on his urine and stool and always needed assistance of an attendant and for his movement and living. Learned counsel for respondent Mr. Aggarwal on the other hand, opposed any further enhancement in the compensation. He claimed that appellant was already getting compensation of Rs. 21 lacs or more inclusive of interest and there was no further warrant for any enhancement in the compensation. He cited Supreme Court judgment in [Grifan Vs. Sarbjeet Singh and Others](#), to show that compensation of only Rs. 2 lacs was awarded for amputation of right leg in that case. He also distinguished the other judgment rendered by Apex Court in [R.D. Hattangadi Vs. M/s. Pest Control \(India\) Pvt. Ltd. and Others](#), on the ground that accident victim in that case was a lawyer carrying a lucrative practice.

4. It goes without saying that Appellant had become crippled and permanently disabled for ever. His permanent disability was 100% and he was living his life, whatever its worth, in a wheel chair. It is also the admitted position that he had become paraplegic and had lost control even over his urine and stool. He required assistance of an attendant and medical treatment all the time which involved a recurring expenditure. His plight would not be described in words, nor could his pain and suffering, frustration and disappointments be gathered or gauged. An athlete of yester-year must be ruing his survival which had plunged him in a veritable hell.

5. No money could obviously compensate him for all this and consequently no reasonable compensation could be determined for what he had and must be going through. But all the same the Courts had to undertake the exercise in the discharge of there duty if only to compensate him to the extent payment of money could. As was aptly observed in Ward V James 1965 (1) APPER 56:-

"Although you cannot give a man so gravely injured much for his lost year, loss during his shortened span, that is, during his expected "years of survival". You can compensate him for loss of earnings during that time and for the cost of nursing treatment and attendance. But how can you compensate him for being rendered a

helpless invalid. He has lost everything that makes life worthwhile. Money is no good to him. Yet Judges and Jurisdiction have to do the best they can and give him what they think is fair. No wonder they find it well nigh insoluble. They are being asked to calculate the incalculable. The figure is bound to be for the most part of converted sum."

6. Given regard to all this, it becomes difficult to assess the non-pecuniary damages in the present case because whatever amount was awarded to the incapacitated and crippled Appellant, it would not restore his broken body and shattered life. But all the same an effort was required to be made to grant him a reasonable compensation that could at least mitigate his suffering and hardship had reduce the intensity of his pain, if not provide him bare minimum amenities and enjoyment of life.

7. Frankly speaking we do not find much of a scope for awarding what Appellant deserved in the present day scenario where human life and limb had ceased to be valuable. But still proceeding within the laid down framework, we find some leeway to increase compensation in the loss of earning which is assessed by Tribunal and FAC at Rs.2000/- P.M. It is a conservative estimate in our view. Because looking to family background and educational and sports career of Appellant, it could be reasonably expected that he would have been suitably employed to earn at least on an average of Rs.5000/- a month. Applying a maximum multiplier of 18 to this, his loss of earning would come to Rs.10,80,000/-.

8. We also find that the award of Rs.2 lacs for pain and suffering and loss of amenities and enjoyment of life was on the lower side. It is common ground that Appellant was living a painful life and stood deprived of all good things and enjoyments of life including marriage etc. He also needed a continuous medical treatment and assistance of an attendant etc. If it was assumed that he would live for 25 years only after the accident and would spend only Rs.2,000/- P.M. on both counts, the compensation amount for this would come to Rs. 6 lacs.

9. At this stage, we noticed Supreme Court judgment in [Ashwani Kumar Mishra Vs. P. Muniam Babu and Others](#), awarding Rs. 5 lacs to a 23 year old youngman whose special cord was damaged in the road accident, by and large in similar circumstances. But this judgment, in over view, does not lay down any generalised principle or guideline for award of non-pecuniary damages in serious accident injury case. The determination of compensation in such cases would depend on the facts and circumstances of each case and notwithstanding the element of sympathy involved with the accident victim. We are also conscious of the fact that assessment of compensation in such cases had to be on objective standards and not based on any fanciful or whimsical calculations. But since a bit of conjecture was permissible, it presented no difficulty to make provision for the recurring medical expenditure and attendance for the Appellant and we felt that estimated compensation for this was based on a conservative estimate.

10. Therefore, proceeding on this premises, Appellant is awarded Rs.10,80,000/- for loss of his earning and Rs.6 lacs for recurring medical expenditure and attendance in the pain and suffering head injury which would take the total compensation amount to Rs. 19,16,781/-. No interest shall, however, be payable on the enhanced amount. The impugned award of FAC shall stand modified accordingly and respondent shall satisfy the remaining award within 4 months from receipt of this order. This appeal is accordingly allow respondent shall satisfy the remaining award within 4 months from receipt of this order. This appeal is accordingly allowed and the cross objections filed by respondent dismissed.