

(2012) 05 DEL CK 0683

Delhi High Court

Case No: FAO 397 of 2003

Rajesh Kumar Bahlla

APPELLANT

Vs

Rajinder Singh and Others

RESPONDENT

Date of Decision: May 9, 2012

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

Bench: Single Bench

Advocate: Suman N. Rawat and Mr. Navneet Goyal, for the Appellant; Salil Paul, Advocate for R-2, for the Respondent

Final Decision: Allowed

Judgement

G.P. Mittal, J.

The Appeal is for enhancement of compensation of Rs. 1,74,000/- awarded to the Appellant for having suffered injuries in a motor accident which occurred on 12.03.1993. On the fateful day i.e. 12.03.1993 at about 1:50 P.M., the Appellant was crossing road at New Moti Nagar and was proceeding to take an entrance examination in MBBS. A truck No. DDL-3276 being driven by the first Respondent in a rash and negligent manner came from the side of Punjabi Bagh. It jumped the red light signal; the driver suddenly applied brakes; the truck turned turtle; the Appellant suffered injuries as both his feet and right hand came under the truck. He was immediately removed to ESI Hospital and was then shifted to Sir Ganga Ram Hospital. He remained admitted in Sir Ganga Ram Hospital from 12.03.1993 to 30.04.1993. He underwent three successful surgeries and bone grafting. He was again admitted in Apollo Hospital from 05.06.1999 to 10.06.1999 to undergo plastic surgery. It is claimed that the Appellant suffered less than 40% disability on account of crush injury on right heel and crush injury on left foot.

2. The finding on negligence is not challenged by the Respondents. My task is only to determine the quantum of compensation.

3. The Claims Tribunal in the impugned order discussed in detail the period of hospitalization, duration of treatment and the injuries suffered by him as under:-

"9. During his statement Rajesh Kumar Bhalla testified that in the above road accident due to bundles of iron having fallen upon him, he received injuries on both his feet. He deposed that right heel of his right foot was slashed while skin had peeled off his left foot and right foot and that of knee joint. His MLC has been proved as Ex. PW2/1 by Hem Chander from ESI Hospital. He deposed that in the first instance after admission at Ganga Ram Hospital, he remained admitted for about one month and on the second occasion for about 10 days. Case sheet for the period Rajesh Kumar was treated during 12.03.1993 to 30.04.1993 have been proved as Ex. PW1/1 by PW6 Dr. K.L. Kalra, Orthopedic Surgeon and as Ex. PW1/2 and PW7 Dr.S.S.Saha, Plastic Surgeon from Ganga Ram Hospital. Dr. Kalra deposed that Rajesh Kumar Bhalla had suffered injuries besides crush injury on foot and tendon injury on right hand, head injury also and further that loss of skin on the dorsum of both feet was also there. PW7 Dr. Saha deposed that during the period 21.04.1993 to 30.04.1993 he treated Rajesh Bhalla for purposes of skin grafting. He also corroborated the statement of petitioner that Rajesh Bhalla had suffered loss in heel because of which skin grafting had to be done. He made a statement on the prospects of the recovery of the petitioner by deposing that it depends upon individual to individual whether after skin grafting of heel he is able to walk properly or not, but ultimately sensation does come after skin grafting. He could not in definite terms tell the present medical status of the heel of the petitioner as he deposed that patient did not come under his follow up after skin grafting. During cross examination he deposed as under:-

"Patient did not complain to me about any complication suffered after skin grafting".

Case sheet Ex. PW1/1 and PW1/2 were produced before the court by Pyara Singh. Petitioner's claim that he suffered compound fractures in his right hand is not supported by the record relating to his treatment available on record which fact was conceded by Sh. Navneet Goel, Id. Counsel for the petitioner. Petitioner then narrated in details the treatment taken by him for a long time. Keeping in view the material available on record, a sum of Rs. 25,000/- is awarded to the petitioner towards his pain and sufferings.

10. On the point of expenditure incurred on medical treatment, petitioner during his own statement and while examining PW1 Pyare Singh proved large number of documents which are referred to in the statement mark PX prepared by the Reader of the court and total amount of expenditure worked out from these documents come to Rs. 1,26,971/- and petitioner is held entitled to be awarded a sum of Rs. 1,26,971/- on account of expenses incurred on his treatment.

11. Petitioner claimed that he lost one academic year as he was to appear in MBBS entrance examination in 1993 but could not appear because of the injuries suffered in the road accident. He stated that next year, he was able to take admission in MBBS entrance examination and on the day he was making the statement before the court, he was studying in MBBS IIInd year. He proved on record the Roll number received by him for entrance examination in 1993 as Ex. PW4/37. This part of his statement goes unassailed during cross examination on behalf of R-3. A sum of Rs. 15,000/- is awarded to the petitioner for loss of one academic year in his studies.

12. Petitioner Rajesh Bhalla during his statement claimed that due to injuries suffered, his earning capacity has been reduced by 40%, that his marriage prospects have lessened, that he cannot participate in sports, that his movement have been restricted, that he cannot balance himself while walking and that he cannot walk fast. His claim on these aspects is not acceptable. Petitioner in this case did examine PW6 Dr. K.L. Kalra, Orthopedic Surgeon and PW7 Dr. S.S. Saha Plastic Surgeon. He did not get his above complaints corroborated by examining either of these two doctors on these vital aspects. Dr. K.L. Kalra, PW6 stated that after discharge from their unit, petitioner was referred to Plastic Surgeon unit for skin grafting. He in clear terms stated as under:-

"I have not seen the patient recently and so I cannot tell the present condition of the patient. Even after skin grafting I had occasioned to medically examine the patient".

He nowhere stated that the injuries suffered by the petitioner could result his physical disability to the extent claimed by the petitioner as referred to in brief above. Similarly, PW7 Dr.S.S.Saha categorically deposed that since petitioner was not under his follow up treatment, he cannot say about the condition of patient after skin grafting was done. He also deposed that patient did not complain to him about any complication suffered after his skin grafting. Since neither the testimony of Dr. Kalra nor that of Dr. Saha support the above averments of the petitioner, and petitioner otherwise failed to adduce reliable evidence to support his claim, he cannot be awarded any amount on these counts.

13. Statement of petitioner on the point of expenditure incurred on conveyance and special diet is not specific. At one place he stated that he might have spent Rs. 800 pm as a TSR charges but then deposed that he cannot say how much amount he had spent on conveyance. He also stated that he might have spent Rs. 30/- to 40/- per day on special diet but did not specify the total amount spent on this count. Keeping in view the material available on record a consolidated amount of Rs. 7,000/- is awarded to the petitioner towards amount spent on special diet and conveyance."

4. On the basis of the discussion on the quantum of compensation, it was established that the Appellant remained under treatment in Sir Ganga Ram Hospital as an indoor and outdoor patient for a period of about four months. He remained

hospitalized in Sir Ganga Ram Hospital from 12.03.1993 to 13.04.1993 and 21.04.1993 to 30.04.1993. He underwent three successive surgeries including bone grafting. The Appellant was unable to take entrance examination in MBBS on the date of the accident because of the injuries suffered by him. He successfully took the examination next year and became a doctor. The Appellant underwent plastic surgery in Apollo Hospital and remained admitted from 05.06.1999 to 10.06.1999. There cannot be any fault with the Claims Tribunal's finding with regard to the grant of compensation on account of the expenses incurred on medical treatment and on special diet and conveyance. The compensation awarded under other heads was wholly inadequate. The compensation awarded towards pain and suffering and loss of one year was not adequate. No compensation was awarded towards loss of earning capacity and loss of amenities in life.

5. It is true that the Appellant did not examine any expert witness to prove his medical condition. However, his testimony that he had to walk on toes; he cannot walk fast; he cannot wear chappal (slippers); he cannot stand for long hours and that this has affected his working capacity; was not challenged in cross-examination. The Disability Certificate Ex. PW-4/50 issued by LNJP Hospital was also not disputed in cross-examination.

6. In [Raj Kumar Vs. Ajay Kumar and Another](#), the Supreme Court brought out the difference between permanent disability and functional disability resulting in the loss of earning capacity. It was laid down that the compensation on account of loss of earning capacity has to be granted in accordance to the nature of job undertaken by the victim of motor accident. Paras 11 and 14 of the report are extracted hereunder:

"11. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this Court in [Arvind Kumar Mishra Vs. New India Assurance Co. Ltd. and Another](#), and [Yadava Kumar Vs. The Divisional Manager, National Insurance Co. Ltd. and Another](#),

x x x x x x

14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent,

if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of "loss of future earnings", if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity."

7. Thus, the same disability may have different impact on the earning capacity of an injured following a different vocation. In this case, the Appellant became doctor, of course, he was delayed by one year on account of the injuries suffered in the accident. The Disability Certificate shows that he suffered disability in respect of lower limbs to the extent of less than 40%. No expert evidence was produced as to the exact loss of his earning capacity. PW-4 did depose that his working capacity has been reduced. However, he did not state whether he was working as a Surgeon or whether he was a Physician. In the facts and circumstances of the case, I would attempt a guess work and take the loss of earning capacity to be 10% for the purpose of awarding the compensation.

8. From Appellant's testimony as PW-4 recorded on 19.05.1999 it appears that he had just completed his MBBS at that time. His testimony suggests that his marriage prospects have been affected on account of the injuries suffered by him. His statement that if he was not injured in the accident, he would have married a equally qualified doctor, was not challenged in cross-examination.

9. The Claims Tribunal awarded a lumpsum compensation of Rs. 15000/- for loss of studies for one year. The Appellant on account of the injuries was delayed by a year in obtaining the MBBS degree. Thus he was entitled to the loss of income of a doctor for one year.

10. For the purpose of awarding loss of income for one year and for loss of earning capacity for a doctor, I would take the starting salary of a doctor in Govt. hospital on the date of the accident which was Rs. 4576/- per month.

11. In view of the above discussion, I award a compensation of Rs. 54,912/- ($4576/- \times 12$) towards loss of income for one year; and Rs. 98,842/- ($4576/- \times 12 \times 18 \times 10\%$) towards loss of earning capacity.

12. It is difficult to measure in terms of money the pain and suffering 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 undergone 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) undergone by the victim; confinement in the hospital and the duration of the treatment.

13. This accident took place in 1993. Considering the period of hospitalization and surgeries undergone, I increase the compensation of Rs. 25,000/- awarded towards pain and suffering to Rs. 50,000/- . I further award a sum of Rs. 50,000/- towards loss of amenities in life, inconvenience and loss of marriage prospects. The compensation is re-assessed as under:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Pain and Suffering	Rs. 25,000/-	Rs. 50,000/-
2.	On account of expenses incurred on medical treatment	Rs. 1,26,971.80/-	Rs. 1,26,971.80/-
3.	On account of loss of academic year	Rs. 15,000/-	Rs. 54,912/-
4.	On account of expenses incurred on special diet and conveyance	Rs. 7,000/-	Rs. 7,000/-
5.	Loss of earning capacity	--	Rs. 98,842/-
6.	Loss of Amenities in Life	--	Rs. 50,000/-
	Total	Rs. 1,73,971.80/- rounded off Rs. 1,74,000/-	Rs. 3,87,725.80/- rounded off Rs. 3,88,000/-

14. The compensation enhanced from Rs. 1,74,000/- to Rs. 3,88,000/- . The enhanced compensation of Rs. 2,14,000/- shall carry interest @ 9% per annum from the date of filing of the Petition till its deposit.

15. Respondent No. 3 New India Assurance Company Limited is directed to deposit the enhanced compensation along with interest in UCO Bank, Delhi High Court, New Delhi within six weeks.

16. On deposit, the amount shall be released in favour of the Appellant immediately. The Appeal is allowed in above terms.