

**(2012) 10 DEL CK 0367**  
**In the Delhi High Court**  
**Case No : MAC. APP. 150 of 2012**

Mrs. Sakshi

APPELLANT

Vs

Oriental insurance company Ltd. and Others

RESPONDENT

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**Date of Decision :** 31-10-2012

**Acts Referred:**

**Citation :** (2012) 10 DEL CK 0367

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

**Bench :** Single Bench

**Advocate :** Inderjeet Singh Kapur, for the Appellant; R.B. Shami, for R-1, for the Respondent

**Final Decision :** Allowed

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## Judgement

G.P. Mittal, J.—The Appeal is for enhancement of compensation of Rs. 16,75,962/- awarded in favour of the Appellant for having suffered injuries in a motor vehicle accident which occurred on 12.03.2005. In the absence of any Appeal filed by the driver, owner or the Insurer, the finding on negligence has attained finality.

2. Immediately after the accident the Appellant was removed to Post Graduate Institute of Medical Education and Research, Chandigarh with the history of loss of consciousness, vomiting and bleeding from right ear. There were lacerated wound on right temporoparietal area. On X-ray examination, she was found to have suffered fracture clavicle, NBI, acromioclavicular disruption, compound Grade III.

3. On reference by the Claims Tribunal, the Appellant was examined by the Medical Board of All India Institute of Medical Sciences (AIIMS) which declared the Appellant to be a case of Traumatic Brain injury sequelae with moderate cognitive impairment with post traumatic deformity of right shoulder. She is physically handicapped and has 81% (Eighty one) permanent physical impairment in relation to her whole body. (Note: This condition is likely to

change. Reassessment recommended after 2 years.)"

4. After a period of two years, the Appellant was re-examined again by the Medical Board of Dr. Ram Manohar Lohia Hospital and the Medical Board declared the Appellant to have suffered permanent disability to the extent of 90% as against 81% assessed by AIIMS.

5. The Claims Tribunal awarded a compensation of Rs. 16,75,962 which is tabulated hereunder:-

Sl. No.

Compensation under various heads Awarded by the Claims Tribunal

1. Compensation on account of Pain and Suffering

Rs. 20,000/-

2. Compensation on account of Medicines, Medical Treatment, Conveyance

Rs. 4,71,318/-

3. Special Diet

Rs. 10,000/-

4. Compensation on account of Permanent Disability and loss of income

Rs. 11,44,644/-

5. Compensation on account of Physical Disfigurement

Rs. 15,000/-

6. Compensation on account of Loss of Enjoyment & Amenity of Life

Rs. 15,000/-

Total

Rs. 16,75,962/-

6. Following contentions are raised on behalf of the Appellant:-

(i) The Appellant had an income of Rs. 1,05,714/- per annum by giving tuitions to the students. The Claims Tribunal erred in making deduction of one-third towards the personal and living expenses as in case of injury, there cannot be any deduction. Reliance is placed on Raj Kumar Vs. Ajay Kumar and Another, .

(ii) No addition towards future prospects/inflation was made by the Claims Tribunal.

(iii) Compensation of Rs. 20,000/- awarded towards pain and suffering was abysmally low.

(iv) No compensation was awarded towards loss of enjoyment of married life.

(v) The compensation awarded towards loss of amenities is on the lower side.

(vi) No conveyance charges were granted for visiting the doctors and attending social obligations.

7. On the other hand, learned counsel for Respondent Insurance Company states that the compensation awarded is exorbitant and excessive. The Claims Tribunal took the income of Rs. 1,05,714/- on the basis of income tax returns filed much after the accident. Thus, the Appellant was entitled to be awarded compensation only on the basis of minimum wages of a Graduate.

8. In a personal injury case, the compensation awarded should be substantial, just and fair and not a token amount.

#### LOSS OF EARNING CAPACITY

9. I have before me the Trial Court record. A perusal of the ITR for Assessment Years 2004-05 and 2005-06 shows that both these ITRs were filed together on 06.02.2006, that is, after about 11 months of the accident. This would mean that the Appellant had not filed any ITR before the accident although she was already aged 28 years and was M.Sc. in Computers.

10. In V. Subbulakshmi and Others Vs. S. Lakshmi and Another, where the accident occurred on 07.05.1997, the Income Tax Return filed on 23.06.1997 was not taken into consideration. In V. Subbulakshmi the Supreme Court held that the ITRs filed after the date of the accident should not be taken into consideration, if there is no other evidence to support the income.

11. On the face of it, the filing of the two ITRs on the same date much after the date of the accident would indicate that they were filed to get the higher compensation. The same, therefore, shall have to be rejected. In the circumstances, the Appellant was entitled to compensation only on the basis of minimum wages of a Graduate.

12. I would agree with the learned counsel for the Appellant that in case of an injured Claimant, deduction towards personal and living expenses is not required to be made. I find support from the report of the Supreme Court in Raj Kumar in this regard.

13. The Appellant would be entitled to an addition of 30% in the Minimum Wages on the basis of the report of the Supreme Court in Santosh Devi Vs. National Insurance Company Ltd. and Others, .

14. The loss of income thus comes to Rs. 10,09,086/- (3805/- + 30% x 12 x 17).

#### PAIN & SUFFERING AND LOSS OF ENJOYMENT & AMENITIES

15. As stated earlier apart from certain fractures the Appellant suffered head injury resulting in 90% disability with respect to her whole body. She has weakness. As per the testimony of PW-3 Dr. Srikumar V., the Appellant suffered traumatic brain injury sequelae with moderate cognitive impairment with post

traumatic deformity of right shoulder injury fracture clavicle with right fracture scapula with weakness of all four limbs. The Appellant remained admitted in PGIMER, Chandigarh for a period of one month and 9 days. She was under treatment of Dr. Kunal Bhanot, Dr. R.S. Vashisht and Dr. Rohtash Grover as an outdoor patient. She also remained under treatment of Dr. Satyvati Devi, Consultant Psychiatrist & Psychotherapist. The period of treatment as an outdoor patient was for over one year. On account of the injuries suffered, the Appellant shall have difficulty in moving on day to day basis. The compensation of Rs. 20,000/- awarded towards pain and suffering was wholly inadequate. The same is enhanced to Rs. 1.5 lacs.

16. The Appellant would not be able to enjoy all the aspects of a normal marital life. On the date of the accident she was a young woman of 28 years. I would, therefore, make a provision of Rs. 1,00,000/- towards loss of marital enjoyment. Since the Appellant has been granted compensation towards 100% loss of earning capacity she is awarded a notional sum of Rs. 25,000/- towards Loss of Amenities and Loss of Expectation of Life.

#### FUTURE CONVEYANCE CHARGES

17. It is urged by the learned counsel for the Appellant that she cannot move of her own because of weakness in all the four limbs. She would not be able to travel in public transport for visiting doctors and attending social obligations. She has to be awarded some compensation towards conveyance charges. Keeping in view the condition of the Appellant, I would make a provision @ Rs. 500/- per month towards conveyance charges and would award a compensation of Rs. 1,02,000/- ( Rs. 500/- x 12 x 17).

18. The compensation awarded is recomputed as under:-

Sl. No.

Compensation under various heads Awarded by this Court

1. Loss of Income

Rs. 10,09,086/-

2. Pain and Suffering

Rs. 1,50,000/-

3. Loss of Marital Enjoyment

Rs. 1,00,000/-

4. Loss of Amenities & Loss of Expectations of Life

Rs. 25,000/-

5. Future Conveyance

Rs. 1,02,000/-

6. Medicines, Medical Treatment, Conveyance (as awarded by the Claims Tribunal)

Rs. 4,71,318/-

7. Special Diet (as awarded by the Claims Tribunal)

Rs. 10,000/-

8. Physical Disfigurement (as awarded by the Claims Tribunal)

Rs. 15,000/-

Total

Rs. 18,82,404/-

19. The compensation is thus enhanced from Rs. 16,75,962/- to Rs. 18,82,404/-

20. The enhanced compensation of Rs. 2,06,442/- shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment, as awarded by the Claims Tribunal.

21. The enhanced compensation shall be deposited with the Claims Tribunal within six weeks.

22. Seventy five percent of the enhanced compensation shall be held in fixed deposit for a period of four years, eight years and twelve years in equal proportion. Rest shall be released on deposit.

23. The Appeal is allowed in above terms. Pending Applications also stand disposed of.