

**(2008) 01 DEL CK 0073**  
**In the Delhi High Court**  
**Case No : MAC App No. 370 of 2006**

Ms. Zareena Bano

APPELLANT

Vs

Shri Sukhpal Singh @ Sukhpal and Another

RESPONDENT

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**Date of Decision :** 16-01-2008

**Acts Referred:**

**Citation :** (2008) ACJ 2503 : (2008) 148 DLT 468

**Hon'ble Judges :** Kailash Gambhir, J

**Bench :** Single Bench

**Advocate :** Nirmal Singh, for the Appellant; S.L. Gupta, for the Respondent

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## Judgement

Kailash Gambhir, J.—The present appeal preferred u/s 173 of The Motor Vehicles Act, 1988, arises out of the award dated 17.9.2003 of the Motor Accident Claims Tribunal, whereby the Tribunal awarded a sum of Rs. 1,22,986/- along with interest @ 7.5% per annum to the claimant from the date of filing of the petition till its realisation.

2. Aggrieved with the findings of the Tribunal, the appellant has challenged the quantum of compensation as granted by the Tribunal in the present appeal.

3. Before adverting to deal with the contentions of the parties, it would be appropriate to give brief facts of the case as under:

On 4.8.2003 at about 3 P.M. the injured appellant was filling the water in water canes from a water tanker which was parked on Pushta Road, Jharoda, when all of a sudden a TATA 407 Tempo bearing registration No. DL-1L A-4841, without blowing any horn being driven by the respondent No. 1 in a rash and negligent manner hit the appellant due to which the front left tyre of the tempo ran over the right leg of the appellant causing injury to her. The appellant was removed to the Trauma Centre where she remained under treatment till 22.8.2003 and thereafter she received treatment at Ramlal Kundan Lal Orthopedic hospital, Pandav Nagar, Delhi.

4. Counsel for the appellant contends that the Tribunal has awarded a very meager amount of compensation although the appellant has suffered serious injuries on her right leg. The compensation in the sum of Rs. 74,236/- has been awarded towards the medical expenses incurred by the parents of the appellant, Rs. 10,000/- has been awarded towards temporary disability, Rs. 15,000/- towards loss of amenities and Rs. 10,000/- towards pain and sufferings. The contention of the counsel for the appellant is that not only the compensation amount under the aforesaid heads is on the lower side but no compensation for the continued special diet, physiotherapy and medicines has been granted by the Tribunal. Counsel for the appellant has invited my attention to the deposition of PW-7 Dr. Sushil Sharma, Orthopedic Surgeon. In his deposition the said witness has clearly stated that the appellant had received a crush injury of right lower limb and a fracture of lower end of femur bone of thigh. There was an extensive loss of skin, tissues and muscles and due to loss of muscles, the appellant would have difficulty in bending her knee and not only this the power of the limb would reduce with the growth of the child and all these defects would be realised by the child after her actual growth. The said surgeon has further deposed that the gait of the child will not be normal and the same will remain limping. Based on the said evidence adduced by the appellant the counsel contends that the Tribunal has not awarded fair and just compensation as envisaged u/s 168 of the Motor Vehicles Act. In support of his argument counsel for the appellant has placed reliance on the judgment of the Apex Court in R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, .

5. Per contra Mr. S.L. Gupta, counsel for the respondent contends that the Tribunal has already awarded adequate compensation considering the age of the child. Counsel further contends that the nature of injuries as suffered by the appellant are not so serious to award compensation amount as has been claimed by the appellant in the present appeal. Counsel for the respondent further contends that the Tribunal has considered all relevant heads for the grant of compensation in the injury case and Therefore, no fault will be found with the findings of the Tribunal.

6. I have heard learned Counsel for the parties and have perused the record.

7. It is no doubt very difficult to assess the exact amount of compensation especially in injury cases for awarding compensation in the cases of accident. The same cannot be assessed by any mathematical precision but at the same time endeavor has to be made to some extent to properly assess the loss as suffered by the victim of the accident. The child of the tender age of 4 years has received the injuries and as per the deposition of the orthopedic surgeon the injury will have the effect of crippling the life of the appellant as in the rest of her life she would not be able to walk properly but will be limping. The child would also not be able to bend her knee properly. The testimony of the orthopedic surgeon clearly shows that the child would not be able to live normal life and she would be deprived from enjoying her life properly as a normal human being.

8. No amount of compensation can restore the physical frame of the appellant child. The possession of one's own body is the first and most valuable of all human rights and while awarding compensation for bodily injuries this primary element is to be kept in mind. Bodily injury is to be treated as a deprivation, which entitles a claimant to damages. The amount of damages varies on account of gravity of bodily injury. Though it is impossible to equate money with human suffering, agony and personal deprivation, the Court and Tribunal should make an honest and serious attempt to award damages so far as money can compensate the loss. Regard must be given to the gravity and degree of deprivation as well as the degree of awareness of the deprivation. Damages awarded in personal injury cases must be substantial and not token damages. The general principle which should govern the assessment of damages in personal injury cases is that the Court should award to injured person such a sum as will put him in the same position as he would have been in, if he had not sustained the injuries. This Court is further of the view that the appellant, a girl child besides suffering the agony and mental pain on account of injuries would seriously suffer in her career and future prospects including matrimonial prospects.

9. In this regard this Court has observed in *Delhi Transport Corporation and Another Vs. Lalita*, , as under:

(16) A person is entitled to damages for the mental suffering caused by the knowledge that his or her life has been shortened or that his or her capacity for enjoying life has been curtailed through physical handicaps. A permanent cripple must experience distress because he or she is constantly dependent upon the care of other persons. The subject-matter of the claim is normal expectation of life and this is "a thing of temporal value, so that its impairment is something for which damages can be given." (*Rose v. Ford* (supra) at page 849 per Lord Wright). The loss of a measure of prospective happiness is the true head of damage in these cases. And there is a presumption in favor of happiness. (*Salmon -torts* 18th ed. page 541). Where a person suffers physical injuries of a nature to prevent him or her from living as full and complete a life as before, not in the matter of earning power, but in the matter of performing the functions and reaping the enjoyments of a normal life, substantial compensation must be awarded. (*Rose v. Ford* (supra) at page 859 per Lord Roche).

(17) These principles fully apply to Lalita. Money cannot renew a shattered human frame. But law must do as best as it can to compensate her for the multitude of deprivations and a diminution in the full pleasure of living. With frustration and handicap she must continue to live "life's fitful fever" with its ups and downs.

(18) On account of the accident resulting in disfigurement and loss of limbs the prospect of marriage of this victim of misfortune has been greatly reduced. In the case of a female plaintiff serious injuries or disfigurement greatly reduce her prospect of marriage. This is a real and material loss, apart from the loss of

amenities. Any injury which handicaps her in the marriage market represents a real pecuniary loss. "The law must compensate her for the lost opportunity of marriage and the support of a husband."

(19) All human life is not continuously an enjoyable thing. The ups and downs of life, its pains and sorrows as well as its joys and pleasures all that makes up life's fitful fever" have to be allowed for in the estimate of compensation. *Benham v. Gambling* (1941) AC 157 (166)-(8).

(20) "A man is not compensated for the physical injury : he is compensated for the loss which he suffers as a result of that injury" (*Baker v. Willoughby* (1970) AC 467 at page 492 per Lord Reid). Lalita's loss is not in having a stiff leg : it is in her inability to lead a full life her inability to enjoy those amenities which depend on freedom of movement. We think that a correct assessment of compensation in such a case can be reached by taking a comprehensive and unitary view of the damage caused by the original accident. Itemisation of the damages by dividing them into heads and sub-heads is often convenient, but is not essential (*Baker v. Willoughby* (supra) at page 496). The award which covers past, present and future injury and loss, must, under our law, be of a lump sum assessed at the conclusion of the legal process once for all. The award is final : it is not susceptible to review or revision as the future unfolds itself. In the end a lump sum award has to be made. This was the approach of Misra J. He awarded a lump sum of Rs. 50,000. We cannot say that he was entirely wrong in his comprehensive conclusion.

10. I, Therefore, feel that the Tribunal has not granted adequate compensation keeping in view the injuries suffered by her. It is also no doubt true that the child will have to be given some special diet besides physiotherapy treatment.

11. Considering the aforesaid facts, I enhance amount of Rs. 10,000/- as granted by the Tribunal towards the disability to Rs. 15,000/-, loss of amenities from 15,000/- to Rs. 25,000/- and pain and sufferings from Rs. 10,000/- to Rs. 25,000/-. I further award an amount of Rs. 15,000/- towards the special diet and physiotherapy treatment.

12. The appellant has already received the compensation amount as awarded by the Tribunal. The differential amount of Rs. 45,000/- be paid by the respondent to the appellant along with up-to-date interest @7.5% p.a. from the date of filing of the petition till realisation.

13. With these directions the appeal stands disposed of.