

**Krishan Kumar Vs. Man Mohd and ors**

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**SooperKanoon Citation :** [sooperkanoon.com/1171903](http://sooperkanoon.com/1171903)

**Court :** Delhi

**Decided On :** Oct-28-2014

**Judge :** Jayant Nath

**Appellant :** Krishan Kumar

**Respondent :** Man Mohd and ors

**Judgement :**

\$~A-43 \* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Date of Decision: October 28, 2014 MAC.APP. 725/2012 KRISHAN KUMAR Through versus MAN MOHD AND ORS Through ..... Appellant Mr.Manish Maini, Adv. .... Respondent Mr.R.C.Mahajan, Adv. for R-3 CORAM: HON'BLE MR. JUSTICE JAYANT NATH JAYANT NATH, J.

(Oral) 1. The present appeal is filed seeking enhancement of compensation granted as per the Award dated 16.3.2012. The brief facts are that on 13.2.2007 the appellant alongwith Kumari Mausam was going to Ghaziabad on Motorcycle. When they reached Govindpuri Police Chowki a truck came from behind and hit the motorcycle. The appellant fell down and was grievously injured in the accident.

2. Based on the evidence on record the Tribunal granted the following compensation:

Cost on treatment Pain and sufferings Conveyance and Special diet Loss of income Future loss of income Loss of amenities Artificial Limb Total

3. Learned counsel appearing for the appellant has made five submissions seeking enhancement of the compensation awarded by the Tribunal. He firstly submits that the Tribunal has awarded only Rs.20,000/- for pain and sufferings which is on the lower side. He points out that the appellant had suffered 85% disability in respect of his right lower limb and amputation and hence Rs.20,000/- as awarded for pain and suffering is on the lower side. He secondly submits that the Tribunal has granted only Rs.10,000/- for conveyance and special diet whereas on account of amputation of his one lower limb the appellant would have to expend large amount on conveyance. It is thirdly submitted that while assessing the loss of future income the Tribunal has accepted the income of the appellant based on the Income Tax Return filed by the appellant who was working as a motor mechanic and as per the Income Tax Returns was earning Rs.99,293/- per annum. However, it is urged that the Tribunal ignored that the appellant on the date of the accident was 27 years of age and would be entitled to future prospects of 50% for the purpose of assessment of loss of future earnings. It is further urged that though as per evidence on record the appellant needed a sum of Rs.6 lacs for an artificial limb, the Tribunal has wrongly without any basis not accepted the evidence on record and only granted Rs.2 lacs on account of artificial limb including for his future maintenance. He lastly submits that no amount has been given on account of loss of marriage prospects and loss of expectancy of life.

4. As far as pain and suffering is concerned, as per the affidavit by way of evidence filed by the appellant he remained admitted in Sir Ganga Ram Hospital from 14.2.2007 till 5.3.2007. In addition he received the following i. Amputation right leg above knee. ii Fracture left leg. iii Fracture Pelvic

5. As per the disability certificate issued by Guru Teg Bahadur Hospital the appellant has loco motor disability and 85% permanent loco motor impairment in relation to right lower limb.

6. Keeping in view the nature of injuries suffered by the appellant in my opinion the compensation for pain and sufferings is on the lower side. I enhance the said compensation to Rs.50,000/-.

7. On the issue of conveyance and special diet, in my opinion given the nature of injuries suffered by the appellant, it may not be possible for him to commute in public transport. I enhance the compensation payable for conveyance and enhance it from Rs.10,000/- to Rs.50,000/-.

8. Coming now to the loss of earning capacity the disability certificate mentions that he has 85% permanent loco motor impairment in relation to right lower limb. PW-6 Dr.Puneet Mishra has exhibited the disability certificate. He, however, in his cross-examination stated that he was unable to state the overall disability of the patient.

9. Appellant in his affidavit by way of evidence on his functional disability stated as follows:

That at the time of accident I was a motor mechanic and earning Rs.99,293/- per annum. I am a income tax assessee. After the accident I could not work till today. I have suffered 80% disability. Due to the accident I cannot work as a Motor Mechanic through my life. I have become 100% disabled for my job.

10. In his cross-examination he stated as follows:- was not an employee. Vol. I was doing my own work. I do not have any other document pertaining to my business. I had been doing my own work for eight years prior to the accident. It is wrong to suggest that I am deposing falsely in regard to my earning and work. I did not get formal education of motor mechanic. Vol. I learned it from a senior mechanic. It is wrong to suggest that I am deposing falsely about income and occupation.

11. We may first look at the judgment of the Supreme Court in the case of Raj Kumar vs. Ajay Kumar & Anr. (2011)1 SCC343. Relevant portion of the judgment reads as follows:

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. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.

12. In my opinion, given the nature of injuries suffered by the appellant he would have found it extremely difficult to carry on the occupation of a motor mechanic. The job of motor mechanic involves a large amount of physical labour. As his right lower limb is amputated it would be extremely difficult for him to carry on the work. Even if he is able to carry on the work it would be at a very slow pace and with great difficulty.

13. In view of the above, I assess the functional disability as 85% and not as 50% as done by the Tribunal.

14. On future prospects, I can take judicial note of the fact that minimum wages for an unskilled worker in 2002 were Rs.2679.70/- P.M. and in 2012 were Rs.7020/- P.M. It is obvious that the prescribed minimum wages have more than doubled in

ten years.

15. In case of Rajesh & Ors. vs. Rajbir Singh & Ors.(supra), the Supreme Court held that in the case of self employed or those on fixed wages, when the victim is below 40 years an addition of 50% should be made in the wages for the purpose of computing loss of future earnings.

16. In the case of Smt.Savita vs. Bindar Singh & Ors., (2014) 4 SCC505 the Supreme Court was of the view that in the case of self employed or those engaged on fixed wages, 30% increase in income over period of time would be appropriate. In the case of V.Mekala vs. M.Malathi & Anr., 2014 ACJ1441 the Supreme Court in the case of injury to a student who was studying in Class XI aged 16 years had awarded 50% increase for future prospects.

17. Taking into consideration the age of the deceased, in my opinion it would be justified to add 50% for future prospects. Loss of earning capacity would now work out to be Rs. 21,52,183/- (99,293 + 50%) x 17 x 85%).

18. Coming to the next submission of learned counsel for the appellant regarding artificial limb, PW-5 Susambit Sarangi in his evidence stated that he is working as a Prosthetist & Orthotist, mainly responsible for fabrication/preparation of artificial limb. He is an employee of Otto Bock Company. He has prepared the quotation and cost of fabrication of the artificial limb which is given as Rs.4,20,952/-.

19. The Tribunal, however, concluded that no cogent evidence has come on record with regard to the artificial limb. The Tribunal has awarded Rs.2 lacs on account of artificial limb including cost for future maintenance.

20. In my opinion, the evidence of PW-5 does not inspire confidence. The evidence does not explain the need for such an expensive limb, how it would be beneficial to the patient etc. I see no reason to differ from the findings of the Tribunal on grant of Rs.2 lacs on account of artificial limb.

21. Now coming to loss of marriage prospects and loss of future expectation no amount has been granted by the Tribunal under the said head. I award a sum of Rs.1 lac to the appellant on account of loss of marriage prospects and loss of

expectancy of life.

22. The total compensation would now be read as under:

Cost on treatment Pain and sufferings Conveyance and Special diet  
MAC.APP.725/2012 : : Loss of income Future loss of income Loss of amenities  
Loss of marriage prospects & Loss of expectancy of life Artificial Limb Total 23. : : :  
Rs.24,000/Rs.21,52,183/Rs.50,000/- : : : Rs.1,00,000/Rs.2,00,000/Rs.31,26,183/-  
The respondent No.3 insurance company shall deposit the additional amount  
within six weeks from today alongwith interest @7.5% from the date of filing the  
claim petition till deposit in Court. 50% of the enhanced compensation shall be  
released to the appellant. Balance 50% shall be put in a fixed deposit for a period  
of six years. Interest thereof shall be made available to the appellant. Appeal  
stands disposed of. JAYANT NATH, J OCTOBER28 2014 n

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