Neutral Citation Number : 2023/DHC/001379

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 24th FEBRUARY, 2023

IN THE MATTER OF:

\+ **LPA 92/2021 & CM APPL. 8454/2021**

GOVT OF NCT OF DELHI & ANR ..... Appellants

Through: Mr. Satyakam, ASC for GNCTD.

versus

SHRI PAL ..... Respondent

Through: Ms. Hetvi Patel and Mr. Rohit Saini, Advocates.

**CORAM:**
**HON'BLE THE CHIEF JUSTICE**
**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT**

**SUBRAMONIUM PRASAD, J.**

1. Aggrieved by the Judgment dated 25.01.2021 passed by the learned Single Judge in W.P.(C) 7856/2010 whereby the learned Single Judge directed the Respondent Nos.1 and 2 therein (Appellants herein) to pay a sum of Rs.23,47,680/- to the Petitioner therein (Respondent herein) as compensation along with the interest at the rate of 9% per annum from the date of filing the petition, the Appellants have filed the instant appeal.

2. Shorn of details, brief facts leading to the filing of the instant appeal are as under:

a) On 30.06.2010, the Respondent, a vegetable vender, approached Appellant No.2/Babu Jagjivan Ram Hospital complaining of lower abdominal pain, diarrhoea and vomiting. It is stated that he was

administered three injections i.e., Rantac IV, Voveran IM and Buscopan IM injections. 2 out of these 3 injections were administered intra-veinously, because of which Respondent had developed complications. On the same day, the Respondent came back to Appellant No.2/Babu Jagjivan Ram Hospital where he was diagnosed with Thrombophlebitis and was administered 2 more injections, namely, IV Avil and IV Efcorlin.

b) On 01.07.2010, the Respondent, thereafter, was referred to Hindu Rao Hospital (Respondent No.4 in the Writ Petition) where he was denied emergency treatment, and was advised to approach a specialist doctor at LNJP Hospital, Delhi. On 02.07.2010, the Respondent herein was diagnosed with Compartment Syndrome, and later admitted for a Fasciotomy procedure. After the Respondent was kept under observation at LNJP Hospital for 27 days, the patient was advised to get his affected arm amputated. The Respondent, thereafter, got discharged himself on his own.

c) On 19.11.2010, the Respondent herein filed writ petition being W.P.(C) 7856/2010 (from which the present appeal arises) with prayers, *inter-alia*, seeking issuance of directions to Appellant/Babu Jagjivan Ram Hospital to provide necessary medical assistance for treatment of his damaged forearm, and to provide adequate compensation for the loss suffered by him on account of the Appellant/Babu Jagjivan Ram Hospital's negligent treatment.

d) It is stated that *vide* Order dated 18.02.2011 passed in W.P.(C) 7856/2010, this Court directed the Superintendent of RML Hospital, Delhi to arrange for a thorough medical examination of the patient,

and to advise the patient of appropriate medical treatment. On 22.03.2011, on directions issued by the Court in WP (C) 7856/2010, a Medical Board of RML Hospital was constituted to look into the case of the Respondent and to submit a report with their findings. Relevant extracted portion of the Medical Board report is reads as under:

> *"The right upper limb is affected from elbow downwards. The upper two third of ulnar bone is exposed, grossly infected and non-viable. There is stiffness of elbow joint. The supination and pronation movement is restricted. There is stiffness of wrist joint, MP Joints, PIP joints and DIP joints of all the fingers. The thumb is gangrenous line of demarcation at distal to MP Joint. There is partial sensation in the forearm.*
>
> *Opinion: Post volkmann ischemic contracture, exposed and non- viableulnar bone with infected wound with stiff hand and elbow with gangrene thumb hypo-anesthetic and non-functional hand.*
>
> *Treatment option: Amputation of thumb at MP joint level and coverage of exposed bone with flap cover. However, in view of severe stiffness of wrist and small joints and sensory impairment limb will have negligible function. Amputation of right forearm and hand at elbow Joint may be considered in the long run."*

e) This Court *vide* Order dated 22.07.2013 directed the Appellant No.1 herein/GNCTD, to constitute an Enquiry Committee, consisting of three senior doctors to examine the complaint of the Petitioner (Respondent herein) made in the Writ Petition, and report as to

whether there has been any negligence on the part of Appellant No.2/Babu Jagjivan Ram Hospital, or any of its doctors/staff members in the treatment of the Respondent. The Committee was also tasked with identifying specific persons, responsible for acts of negligence, if any, during the treatment of the Respondent at the hospital.

f) The Enquiry Committee submitted its report dated 09.09.2013. The report attributes the cause of injury to an error of judgment on the part of Junior Resident and the Senior Residents on duty in identifying the complications arising out of the patient's case.

g) Considering and accepting the Enquiry Report, this Court *vide* Order dated 27.11.2015, determined that this was a case of medical negligence, and held that the Respondent is accordingly entitled to compensation from Appellants. Further, the Respondent was directed to quantify the compensation by applying the principles applicable to Motor Accident Claim cases and submit the same through an affidavit.

h) On 04.12.2015, an affidavit containing computation of amount payable in lieu of compensation was submitted by the Respondent herein, in compliance with the Order dated 27.11.2015.The affidavit contains a breakdown of the method of calculation of the compensation amount, which was calculated to the tune of Rs. 55,91,040/-, as per principles applicable to motor vehicles accident claim cases.

i) On 22.12.2020, Appellants herein filed a computation affidavit. It is mentioned that with the kind of injury that the Respondent had sustained, his disability should be ascertained at 30%. The

compensation was calculated at 12,000x12x14x30/100 = Rs.6,04,800/-. It is further submitted by the Appellants that, after deducting the payment of Rs. 68,103.79/- already made, the Respondent was entitled to a compensation of Rs.5,36,787/- with interest @ 6% per annum.

j) The learned Single Judge *vide* Judgment dated 25.01.2021 (impugned herein) assessed the monthly income of the Respondent a sum of Rs.12,000/-, and in terms of the Judgment of the Apex Court in Syed Sadiq &Ors. vs. Divisional Manager, United India Insurance Company Ltd., **(2014) 2 SCC 735,** which also dealt with the case of a vegetable vendor, assessed the disability of the Respondent at 85% to determine the loss of income.

k) The learned Single Judge, thereafter, computed the amount of compensation by applying multiplier of 14 and assessed the compensation amount at Rs.22,27,680/-. The assessment arrived at reads as under:-

*"Rs.12,000 X 12 X 85/100 X 14 = Rs.17,13,600.00*

*Add 30% of the above = Rs.5,14,080.00*

*TOTAL = Rs.22,27,680.00"*

l) The learned Single Judge also assessed a non-pecuniary claim i.e., Rs.90,000/- towards pain and suffering and Rs.30,000/- towards cost for litigation, and thereafter, directed the Appellants to pay a sum of Rs.23,47,680/- to the Respondent as compensation along with the interest at the rate of 9% per annum from the date of filing the petition.

m) The Appellants, thereafter, approached this Court challenging the Judgement dated 25.01.2021 passed by the learned Single Judge in W.P.(C) 7856/2010 by filing the instant appeal.

3. Mr. Satyakam, learned ASC appearing for the Appellants, submits that the disability of the Respondent could not be assessed more than 30%. He submits that the Respondent had left the hospital against the medical advice and got himself treated from a quack, and therefore, the Appellants cannot be held responsible for the damage has been caused to his hand after he had left the hospital against the medical advice. The Ld. ASC submits that the Ld. Single Judge in the impugned order failed to consider that there was contributory negligence on part of the Respondent in getting himself treated by a quack against medical advice, and this factor ought to have proportionately reduced the compensation amount to be paid to him.

4. Mr. Satyakam further submits that the learned Single Judge ought not to have applied the facts of Judgment of the Apex Court passed in Syed Sadiq (Supra) because in that case, unlike the present case, the claimant had sustained injuries on his lower end of right femur, left upper arm and his right leg had to be amputated.

5. The Ld. ASC submits that in the present case, the compensation should be calculated only as per the Workmen Compensation Act. He places on Paragraph Nos. 16 and 21 of an Apex Court decision in Raj Kumar v. Ajay Kumar, **(2011) 1 SCC 343,** to submit that the method adopted by the Ld. Single Judge in calculating the compensation was not done in accordance with the parameters under Schedule I of the Workmen's Compensation Act, 1923.

6. *Per contra*, learned Counsel appearing for the Respondent submits that functional disability of the Respondent has been assessed at 90% as per the disability certificate dated 29.07.2011 issued by Dr. Baba Saheb Ambedkar Hospital, Delhi. She places reliance upon the Report dated 22.03.2011 prepared by the RML Hospital which notes that "amputation of the right forearm and hand at elbow joint may be considered in the long run". She also relied upon an Enquiry Committee Report which categorically states that there has been an error of judgment on the part of the Junior Resident and Senior Resident on duty inasmuch as injections had been mixed and injected in the veins which developed into further complications.

7. Heard learned Counsel appearing for the Parties and perused the material on record.

8. The facts of the case reveals that the Respondent approached Appellant No.2/Babu Jagjivan Ram Hospital complaining of lower abdominal pain, diarrhoea and vomiting and has come out of losing his hand. This is a case of *res ipsa loquitur* and the mistake on the part of the hospital stares at its face. The disability certificate dated 29.07.2011 issued by Dr. Baba Saheb Ambedkar Hospital, Delhi has been produced by the Respondent which has determined the permanent disability of the Respondent at 90%. The disability certificate also states that the condition of the Respondent is not likely to improve.

9. Material on record further discloses that an enquiry was ordered by the Principal Secretary (Health) to examine the complaint of the Respondent herein and report as to whether there has been any negligence on the part of the Appellant No.2/Babu Jagjivan Ram Hospital or any of its doctors/staff

members in the treatment of the Respondent. The Committee, so constituted for enquiry, consisted of three members i.e., HOD, Medicine (Chairman), Sr. Specialist, Ortho(Member) of Dr. BSA Hospital and HOD (Anestheisia) (Member) of DDU Hospital. The statements of the Respondent, staff nurses, junior resident and various CMOs, who had attended the Respondent, were taken. After statements were taken, the Committee came to the following conclusions which read as under:

> ***"CONCLUSION***
>
> *Based on records supplied, statement of complaints/witnesses and other available records. These are the observation.*
>
> *Patient Shri Pal had come to casualty with complaints of loose motions and Pain abdomen on 30.06.10 morning. He was examined by Dr. on duty Dr. Sandeep (JR and advice certain treatment in form of injections and tabletes and patient was referred to staff nurse on duty for medication.*
>
> *As per hospital records two staff nurse were on duty S/N Asha and S/N Mamta who had given injections. We could not identify based on records or statements and complainant's view that which staff Nurse had given injections.*
>
> *As alleged by the complainant, that two injections had been mixed and injected in vein because of which he had complications. The Members of Committee could not substantiate his allegations of complication following mixing of injections on the basis of available records of and statements.*
>
> *However, the members of committee observed on the basis of complaints statement that this could be possible due to intrarterial injection in the cubital fossa. The complication could happen due to :*

> *1. Collapsed peripheral veins due to dehydration following loose motions. So while giving blindly the injection in such situation can be administered in the artery.*
>
> *2. The fact that brachial artery may divide above the cubital fossa and has superficial course of ulnar artery on medial side at cubital fossa and is prone for accidental arterial puncture.*
>
> *It is further substantiated by the fact that this patient's present state of right upper forearm is due to complication of artery involvement.*
>
> *It appears that there is accidental injection into the artery for which both Staff nurses could not recognize compilation of artery involvement.*
>
> ***There has been error of judgment on part of JR on duty (Dr. Sandeep) in identifying the complication of this case.***
>
> ***Even the Senior Resident of Surgery Dr. Milan who examined the patient twice failed to recognize the complication and manage the case appropriately and Hence it appears that there is error of judgment on part of SR surgery also****."* (emphasis supplied)

10. As per the abovementioned conclusion, the Enquiry Committee held that there has been an error of judgment on the part of the Junior Resident on duty. The Enquiry Committee also held that the Senior Resident of Surgery, who examined the patient twice, failed to recognize the complication and manage the case appropriately and hence there was error of judgment on part of SR surgery also. The Appellants are, therefore, bound to compensate the loss suffered by the Respondent.

11. The learned Single Judge has relied upon the case of Syed Sadiq (Supra). The said case also dealt with a case of vegetable vendor. Paragraph No.7 of the said Judgment, which brings out the similarity between two cases, reads as under:

> *"**7.** Further, the appellant claims that he was working as a vegetable vendor. It is true that a vegetable vendor might not require mobility to the extent that he sells vegetables at one place. However, the occupation of vegetable vending is not confined to selling vegetables from a particular location. It rather involves procuring vegetables from the wholesale market or the farmers and then selling it off in the retail market. This often involves selling vegetables in the cart which requires 100% mobility. But even by conservative approach, if we presume that the vegetable vending by the appellant claimant involved selling vegetables from one place, the claimant would require assistance with his mobility in bringing vegetables to the marketplace which otherwise would be extremely difficult for him with an amputated leg. We are required to be sensitive while dealing with manual labour cases where loss of limb is often equivalent to loss of livelihood. Yet, considering that the appellant claimant is still capable to fend for his livelihood once he is brought in the marketplace, we determine the disability at 85% to determine the loss of income."*

12. In Syed Sadiq (Supra) an argument was also taken in respect of contributory negligence on the part of the victim therein which was rejected by the Apex Court.

13. The contention of Mr, Satyakam, learned ASC appearing for the Appellants, that the Respondent had left the hospital against the medical advice of the hospital and got treatment by a quack is of no avail in view of

the findings of the Enquiry Committee which categorically states that there was a mistake in administering injections to the Respondent and both the Junior Resident, and the Senior Resident failed to recognize the complication and manage the case of the Respondent appropriately.

14. The poor vegetable vendor who got discharged himself from the hospital cannot be said contributed to the negligence of the doctors on duty.

15. The Appellants herein have assessed the disability of the Respondent at 30%. The disability certificate dated 29.07.2011 issued by Dr. Baba Saheb Ambedkar Hospital, Delhi has been produced by the Respondent which has determined the permanent disability of the Respondent at 90%. The learned Single Judge *vide* impugned judgment has assessed the disability of the Respondent at 85% which does not require any interference.

16. The effect of the loss of arm of a vegetable vendor is such that his capacity to conduct business is severely compromised and as the Apex Court in Syed Sadiq (Supra) has observed that Courts have to be sensitive while dealing with manual labour cases where loss of limb is often equivalent to the loss of livelihood. The contention of the Respondents that the calculation of damages ought to be done on the basis of Workmen Compensation Act, 1923, is not tenable. The Apex Court in Lata Wadhwa v. State of Bihar, **(2001) 8 SCC 197,** while dealing with a case where a devastating fire left many people dead and a number of persons sustained burn injuries, applied principles for calculating compensation under the Motor Vehicles Act, 1988. The Apex Court had observed that for proper computation of compensation, the multiplier method would be appropriate as it would introduce a consistency of principles for assessment of such compensation. The Apex Court has observed as under:-

*"4. The Report consists of two parts, Part I dealing with cases of death and Part II dealing with cases of burn injury. In view of the indications in the order of this Court, referring the matter to Shri Chandrachud that in deciding the quantum of compensation, the principles evolved in Shafiya Khatoon case [1985 ACJ 212 (AP)] as well as two other cases of the Andhra Pradesh High Court, in the Report, the principles evolved in the aforesaid judgments have been analysed at the first instance. It has been held that the multiplier method having been consistently applied by the Supreme Court to decide the question of compensation in the cases arising out of the Motor Vehicles Act, the said multiplier method has been adopted in the present case. In the Report, even the view of the British Law Commission has been extracted, which indicates: (ACJ p. 218, para 18)*

> *"The multiplier has been, remains and should continue to remain, the ordinary, the best and the only method of assessing the value of a number of future annual sums."*

*It has also been stated in the aforesaid Report that though Lord Denning advocated the use of the annuity tables and the actuary's assistance in Hodges v. Harland & Wolff Ltd. [(1965) 1 All ER 1086 (CA)] but the British Law Commission accepted the use and relevancy of the annuity tables in its Working Paper No. 27 by observing: (ACJ p. 218, para 23)*

> *"The actuarial method of calculation, whether from expert evidence or from tables, continues to be technically relevant and technically admissible but its usefulness is confined, except perhaps in very unusual cases, to an ancillary means of checking a computation already made by the multiplier method."*

*Even Kemp & Kemp on Quantum of Damages after comparing the multipliers chosen by Judges from their experience found a close proximity between the said multiplier method and those arrived at from the annuity tables in the American restatement of the law of torts. After a thorough analysis of the different methods of computation of the compensation to be paid to the dependants of the deceased and what are the different methods of computing loss of future earnings, Shri Chandrachud has come to the conclusion that the multiplier method is of universal application and is being accepted and adopted in India by courts, including the Supreme Court and as such, it would be meet and proper to apply the said method for determining the quantum of compensation. The counsel, appearing for the claimants as well as the Company also agreed before Shri Chandrachud that the decision should be based on the principles enunciated in the three judgments mentioned in the order of the Supreme Court as well as the cases relied upon in those judgments. Amongst the deceased, there were many housewives and they have been classified into two categories, one, those whose husbands were employees of the Company and as such whose income is known and, others, who were outsiders, whose husbands' income is not known at all. The deceased housewives have been grouped into four, on the basis of their age and different multiplier has been applied on the basis of their age. Shri Chandrachud also has considered the income of the husbands of those housewives, who are employees of the Company and then on that basis, has tried to determine the loss on the death of the wife and after applying the multiplier and determining the total amount of compensation, an addition of Rs 25,000 has been made as a conventional figure and the total amount of compensation has been arrived at. So far as the employees of Tata Iron and Steel Company are concerned, who died in the tragedy, their annual income has been arrived at and thereafter*

*60% of the income has been held to be dependency and then, a multiplier has been applied and on finding out the total amount of compensation, a conventional amount of Rs 25,000 has been added. So far as the children are concerned, in the absence of any material, a uniform amount has been fixed at Rs 50,000 to which again, a conventional figure of Rs 25,000 has been added for determining the total amount of compensation payable. So far as the children above 10 years of age are concerned, the contribution of those children to their parents has been assessed at Rs 12,000 per year, taking all imponderables into account and multiplier of 11 has been applied and the conventional amount of Rs 25,000 has been added. Two of the children in the said age group, whose father did not claim any compensation as they were negotiating with the employer, for getting a piece of land and as such no compensation has been determined in their case. In the case of death of known employees of the Company, the annual income has been arrived at, and then taking into account the age of the deceased and finding the dependency at 60% of the annual income and then by application of different multipliers, the compensation has been arrived at. As stated earlier, a conventional compensation of Rs 25,000 has been added in each case. While determining the compensation, the benefits already granted to the dependants of the deceased as well as to the injured persons or their relatives have not been taken into account in view of the specific orders of this Court dated 15-12-1993, though it would be a relevant consideration for us, while disposing of the matter finally. No interest however has been granted, as the question of interest has been left for consideration of this Court. So far as the costs of the proceedings are concerned, this Court had directed Tata Iron and Steel Company to bear the entire cost of the proceedings."*

17. The contention of the learned ASC that the compensation must be assessed in accordance with the Workmen Compensation Act cannot be accepted.

18. The right upper limb of the Respondent has been affected from elbow downwards. The upper two third of ulnar bone is exposed, grossly infected and non-viable. There is stiffness of elbow joint. The supination and pronation movement is restricted. There is stiffness of wrist joint, MP Joints, PIP joints and DIP joints of all the fingers. The thumb is gangrenous line of demarcation at distal to MP Joint. There is partial sensation in the forearm. It has been opined by the Dr. RML Hospital that in view of severe stiffness of wrist and small joints and sensory impairment limb will have negligible Junction and amputation of right forearm and hand at elbow Joint may be considered in the long run. This means that Respondent herein has virtually lost his right arm.

19. The Appellants have not disputed the computation of the monthly income of the Respondent i.e., Rs.12,000/- per month. The multiplier of 14 which has been used in the calculation of compensation relying upon the Judgment of Apex Court passed in Syed Sadiq (Supra) and Raj Kumar (Supra) also cannot be faulted with.

20. In view of the above, the computation of compensation cannot be found fault with. The Respondent has also not challenged the Order seeking enhancement of the compensation as directed by the learned Single Judge. Therefore, the Judgment passed by the learned Single Judge does not require any interference and the instant appeal preferred by the Appellants cannot succeed.

21. With these observations, the appeal is dismissed, along with pending application(s), if any.

**SATISH CHANDRA SHARMA, C.J.**

**SUBRAMONIUM PRASAD, J**

**FEBRUARY 24, 2023**
*S. Zakir/ss*