

* **HIGH COURT OF DELHI : NEW DELHI**

FAO No.5/2002

% Judgment reserved on: 16th July, 2008

Judgment delivered on: 23rd July, 2008

M.K.Khar
S/o Sh.M.L.Khar,
R/o 8-A, Hydel Society,
Sector-46, Faridabad.
Haryana. Appellant
Through: Mr.N.Safaya, Adv.

Versus

1. Delhi Transport Corporation,
Through its Chairman,
I.P.Estate,
New Delhi.

2. Shri Sadhu Singh, Driver,
Badge No.12561, Okhla-II,
D.T.C. Depot, New Delhi.
...Respondents.

Through: Mr.J.N.Aggarwal, Adv.
for R-1.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

V.B.Gupta, J.

The present appeal under section 173 of the Motor Vehicles Act, 1988 (for short as the “Act”) has been filed against the award dated 04.10.01 passed by Sh. G.P.Mittal, Judge, Motor Accident Claims Tribunal (for short as the “Tribunal”), New Delhi for enhancement of compensation.

2. Brief facts of the case are that on 29.02.92, Appellant along with his sister was travelling in D.T.C. bus no. 6185, route no. 405. Since the bus was over crowded, he was standing near the emergency door of the bus. When the bus reached the crossing of Zoo and Mathura Road, it took a very sharp turn, as a result of which emergency door flung open. He fell down from the said emergency door and sustained injuries on the right lumber area, left knee and left wrist etc. He was removed to AIIMS and made a report to the police as well as to the D.T.C.

3. The Appellant claimed compensation of Rs.1,00,000/- from Delhi Transport Corporation and driver of D.T.C. bus no.6185 for having caused injuries to him in a roadside accident.

4. Respondent D.T.C. filed a written statement contesting the claim of the Appellant and took up the plea that since the complete particulars of the D.T.C. bus alleged to have been involved in the alleged accident have not been given, it was not in a position to admit or deny the factum of involvement of the bus in the accident. It was denied that the Appellant had suffered the injuries as alleged or was entitled to any compensation.

5. Vide impugned judgment, the Tribunal has awarded the compensation of Rs.3,000/- along with the interest @ 9% per annum from the date of filing of the petition till realization.

6. It has been contended by the Ld. Counsel for the Appellant that the Tribunal has failed to appreciate

that the appellant remained under treatment for about 8 months and could not join his duties. The Appellant at that time was drawing a salary of Rs.4,000/- per month and the Appellant also travelled to the hospital for physiotherapy exercises frequently and spent about Rs.7,000/- to Rs.10,000/-. The Tribunal has failed to consider the fact that the injury of the Appellant on neck of humerus was grievous in nature and the Appellant proved the same by Ex.PW1/3. The Appellant also proved his injuries by Ex.PW1/2 and 1/3 and PW1/1. The bone of the left hand wrist of the Appellant which was fractured was dislocated and the Appellant remained under treatment for a long time and still the pain persists. The Tribunal has erred in not awarding the appropriate amount spent by the Appellant on his treatment, travelling to hospital, medicines and treatment received at Faridabad. The Tribunal also erred in appreciating the facts of the case that at the time of accident, the Appellant was posted at Srinagar and this is a clear fact that the Appellant cannot visit

or produce any evidence from Srinagar J&K being a disturbed area and the Tribunal failed in taking the judicial notice of this fact. The Appellant got treatment in AIIMS and in the other Hospital, but no FIR was recorded by the Police even on written complaint of the Appellant. The Appellant could not care about the documents of treatment and expenses being busy in treatment and the trauma suffered by him.

7. On the other hand, the Ld. Counsel for the Respondent has contended that neither the doctor who has treated the appellant has appeared nor the nature of injuries have been proved by the Appellant. Thus, in the absence of any evidence, the compensation awarded by the Tribunal is just and reasonable.

8. The D.T.C. had failed to produce any evidence before the Tribunal that it had no bus with no. 6185 plying on route no. 405 at 1.45 p.m. on 29.02.92. Further, the testimony of the Appellant, that the driver

of the D.T.C. had taken a sudden turn at the crossing of Zoo and Mathura Road, as a result of which emergency door where he was standing was flung open, has remained unchallenged and unrebutted. Thus in the absence of any proof, the Tribunal believed the Appellant that the accident was caused by the D.T.C. bus bearing no. 6185.

9. The Appellant has not proved any bills regarding purchase of medicines or fees paid to the doctor. The Appellant before the Tribunal has simply proved on record only one bill cum receipt of one X-Ray as ex.PW1/4 which shows that the Appellant had paid a sum of Rs. 125/- for the X-Ray. The casualty card, photocopy of which was proved as Ex. PW1/1 would go to show that the Appellant was admitted to casualty/emergency department of AIIMS with history of fall from moving bus. Ex.PW1/1 reveals that the Appellant had suffered multiple abrasions and there were bruises over right elbow, abrasions, over left

knee and there was complaint of pain over right lumber area.

10. Though he claimed that he suffered grievous injuries, however injury reported are simple injuries. Moreover, he was not even admitted in the hospital, but was discharged on the same day.

11. Further, Ex. PW1/3 shows that the Appellant had at sometime suffered fracture of neck of humerus. However, this fracture was not connected by the Appellant with the injuries suffered by him in the accident by leading any evidence, as the accident has taken place in the year 1992 whereas the OPD slip shows fracture of neck of humerus is of the year 1999.

12. The Appellant has not produced before the Tribunal any evidence, to show that he had taken any leave at all on account of injuries suffered by him in the accident. The injuries which are seen from the casualty card Ex.PW1/1 would show that these were not serious, for that the appellant required to take

leave for a day or two. Thus the Appellant has failed to show that he had suffered any loss on this count. The medical expert was also not examined, for proving the nature of the injuries.

13. Thus, in the circumstances of the case, the tribunal has rightly awarded the compensation of Rs.1,000/- for the amount spent on purchase of medicine, treatment, physiotherapy and conveyance and a sum of Rs.2,000/- for pain and suffering and the shock which the Appellant received on account of being flung off from the bus.

14. Though the compensation awarded by the Tribunal looks as a pittance but this fact cannot be ignored that the accident took place in 1992 and at that time the value of money was much more than the present value of money.

15. In view of the above discussion, the award given by the Tribunal is just and sufficient. Accordingly, no

infirmity can be found with the order of learned Tribunal.

16. The present appeal is, therefore, dismissed.

17. No order as to costs

18. Trial Court record has been sent back.

July 23, 2008
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V.B.GUPTA, J.