

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

**FAO App. No.90/2003**

% Judgment reserved on: 25<sup>th</sup> August, 2008

Judgment delivered on: 9<sup>th</sup> September, 2008

Sh. Narinder Jit Singh Dhillon, (N.J.S. Dhillon)  
S/o. S. Surjit Singh Dhillon,  
R/o. 454, Nangloi, New Delhi ....Petitioner

Through: Naresh Chahar, proxy counsel  
for counsel for the petitioner.

Versus

1. Sardar Mamu alias Veeray alias  
Sukhvinder Singh, S/o. Sh. Harbhajan Singh,  
R/o. Jamal Ganj, Dudhail, P.O. Tanda, Rampur, UP.

2. Smt. Salma Begum wife of Lt. Sh. Salamuddeen,  
R/o. B-728, Lajpat Nagar, Moradabad, U.P.

3. The Oriental Insurance Company Ltd.,  
branch office Moradabad U.P.

(ii) Head office a-25/27, Asaf Ali Road,  
New Delhi ...Respondents.

Through: Mr. Ram N. Sharma,  
Adv. for R-3.

Coram:

**HON'BLE MR. JUSTICE V.B. GUPTA**

1. Whether the Reporters of local papers may  
be allowed to see the judgment? Yes

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|-----------------------------------------------------------|-----|
| 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 (for short as the “Act”) has been filed by the appellant against the award dated 05.09.02, passed by Sh. J.P.Sharma, Judge, Motor Accident Claims Tribunal (for short as the “Tribunal”).

2. Brief facts of the case are that on 11.04.98, appellant while driving Maruti Car No. DL-8CB-1045, reached chowk Begumpur road, he noticed that from the opposite side, bus UP-21-3230 being driven by respondent no.1 in utmost careless and negligent manner was coming. Respondent no.1 made an attempt to come on the wrong side and so seeing the wrong attempt as of respondent no.1, appellant by taking out his right hand from the car sitting on driver’s seat signalled respondent no.1 for being careful. Respondent no.1, without caring for the signal

and observing the traffic rules, hit appellant's vehicle near the driving seat because of which right arm of appellant got severed from his body and his car was also damaged. Appellant was removed to District Hospital, Moradabad from where he was taken to AIIMS.

3. Appellant filed the claim petition claiming compensation of Rs.50,00,000/- along with the interest @ 18% per annum against respondent no.1, Sardar Mammu alias Veeray alias Sukhwinder Singh, being the driver of the offending vehicle, respondent no.2, Smt. Salma Begum, being the owner of the offending vehicle and respondent no.3, Oriental Insurance Company as the offending vehicle was insured with them.

4. Respondent nos.1 to 3 in their written statement pleaded that negligence was on the part of the appellant, who was driving Maruti Car.

5. It was alleged by respondent nos. 1 & 2 that appellant was driving his vehicle carelessly at high speed and not on his proper side of the road and as such claim petition does not disclose any cause of action. It was, however, not disputed that bus no. UP-21-3230 at the time of the road accident on 11.4.98 at about 11.15 a.m. was being driven by respondent no.1, was owned by respondent no.2 and was insured with respondent no.3.

6. Vide impugned judgment, the Tribunal awarded compensation to the tune of Rs.4,06,800/- @ 9% per annum from the date of filing of the petition i.e. 15.12.98 till its realization.

7. On 25<sup>th</sup> August, 2008, the matter was listed before this Court for arguments. On that date, Mr. Naresh Chahar, proxy counsel for the appellant appeared and stated that he is proxy counsel for Mr. Sanjay Relhan, who is the Advocate for the appellant and Mr. Sanjay Relhan has not come as he is not well.

8. As per the record, it was found that Mr. Sanjay Relhan was not a counsel in this case and there is no Vakalatnama. Under these circumstances, it was ordered that the proxy counsel has no authority to appear in this case.

9. Hence arguments advanced by learned counsel for respondent no.3 i.e. Insurance Company were heard.

10. It is stated in the grounds of appeal that witnesses examined by the appellant have not been cross-examined at all by respondent no.1 & 2. Respondent no.3 did not cross-examine PW1 to PW3. To domestic servant of the appellant only one question in cross-examination was put. Similarly, to PW4 also only one question in cross-examination was put, PW5 and PW7 were not cross-examined. PW6 was also not cross-examined on all aspects of working of the artificial limb and PW2/Appellant was also not cross-examined on all aspects of his evidence led in

examination-in-chief. There is only a limited cross-examination.

11. It is further stated in the grounds of appeal that the Trial Judge has discussed the contributory negligence imputed to the appellant and thus has given deduction to the extent of 10% from the amount awarded. The reasons given for contributory negligence to allow deduction from the awarded amount is neither cogent nor sufficient because, to PW2 i.e. appellant, no specific question was put about his negligence and PW4, Joga Singh, the only eye witness was cross-examined in the following manner:

“Police did not reach the spot on that day in our presence, as we had come to Delhi on that day.”

12. The site plan being relied by the Trial Judge to make the appellant for contributory negligence, are on the basis of the plan which was neither prepared by the police in the presence of appellant nor the eye witness, who could tell about the correct place where

the appellant had to take his vehicle on Kucha road to save him from the onslaught of negligent driver/respondent no.1. Thus, the amount deducted from the amount awarded was wrong and the award should have been passed without deductions, on account of alleged contributory negligence of the appellant.

13. The other ground is that the Trial Judge has given a finding that the appellant being a lawyer, has only to do his job by using his mental faculties and not by his prowess. After accident, due to dismay i.e. due to his becoming disabled to the extent of 90%, the appellant has not remained a person with full working of his mental faculties due to remorse in his mind because of suffering he received due to his involvement in the accident by rash and negligent act of the driver of the offending vehicle.

14. The appellant remained admitted in AIIMS thrice and was operated every time; he also received treatment and opinions from several other hospitals

and Nursing homes, which have been proved on record. The Trial Judge on the basis of medical bills/prescriptions filed on record, has awarded only an amount of Rs.6,884.22/- for medical treatment.

15. It has been proved on record that appellant remained absent from his work for a period of over six months and even after discharge from Hospital, continues to receive treatment. The appellant could not retain all of the medical prescriptions/ bills because, the priority before him at the relevant time was not reimbursement but saving him from the awkward situation he was put in due to his involvement in accident and to save him from its after effects. Therefore in the circumstances as appellant was put in and the extent of medical attentions needed, the amount awarded is on a much lower side and the amount claimed is the genuine amount.

16. It is further stated that the Trial Court declined to award the amount for engaging a driver and domestic servant.

17. The findings of the Trial Court are erroneous on this account because, he did not take into account the affairs of life to which one has become accustomed. The wife of the appellant is a working lady and their only son is a student of St. Xavier at Rajpur Road, Delhi at a distance of over 20 kilometers and the services regarding leaving of his wife to school and his child of necessity, were required to be provided, which the appellant himself became unable to do. These services were being provided and are being provided after the accident.

18. It is further stated that the expenses incurred by the appellant for procuring artificial limb/artificial right arm from Chandigarh and on account of his incurring to and fro account of his visiting Chandigarh

and staying there, has been declined by the Trial Court with a biased mind.

19. Thus, it has been prayed that the award passed by the Trial Court be enhanced to extent as claimed in the present appeal and while granting enhanced award, the compensation on account of procuring the artificial limb should also be awarded.

20. On the other hand, it is contended by the counsel for the respondent that the award passed by the Tribunal is correct. It is also contended that it is a case of contributory negligence.

21. Further, the appellant has claimed medical expenses to the tune of Rs.1.5 Lacs but he has proved the medical bills only to the extent of Rs. 6,884.22/-, thus, the proven bills have been rightly awarded by the Tribunal.

22. Regarding artificial limb, the appellant has produced Dr. Ashok Khurana. In his cross-examination, he has stated that he does not know how the artificial

limb replaced in place of right arm of the appellant operates and as such there is no evidence with regard to the artificial limb.

23. Lastly, the appellant has stated that his monthly income was Twenty Five Thousand Rupees but as per income tax return proved on record, his income comes to Rs.78,000/- per annum and thus, the Tribunal has rightly taken this as income of the appellant.

24. In support of his case, the appellant examined PW1, Ranbir Singh, himself as PW2, PW3 Pankaj Kumar, PW 4 Sardar Joga Singh, PW 5 N.S.Bist, PW 6 Dr. Ashok Khurana and PW 7 Satish kumar from income tax department.

25. No evidence was adduced by the respondents in rebuttal.

26. Negligence is nothing but a failure to observe precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury. Not only commission of an act but also an

omission to do something which a reasonable man would do or is obligated to do amounts to negligence. Therefore, negligence does not always mean absolute carelessness, but also includes a failure to observe the degree of care and precaution and vigilance duly required under the circumstances which justly warrant. Negligence is a relative and comparative term. No rigid formula and no mathematical ratio could be laid down as to what constitutes negligence under particular circumstances of the accident, but to determine what an act would amount or would not amount to negligence, the test would be whether a prudent and reasonable man would cause damage. In other words, not only an act but also an omission to do an act which the circumstances warrant from a reasonable man's point of view and which the law obliged would constitute negligence.

27. Contributory negligence has been explained by the Apex Court in ***The Municipal Corporation of***

***Greater Bombay v. Shri Laxman Iyer and Anr., JT***

***2003 (8) SC 108***, as under:

“To determine whether an act would be or would not be negligent, it is relevant to determine if any reasonable man would foresee that the act would cause damage or not. The omission to do what the law obligates or even the failure to do anything in a manner, mode or method envisaged by law would equally and per se constitute negligence on the part of such person. If the answer is in the affirmative, it is a negligent act. Where an accident is due to negligence of both parties, substantially there would be contributory negligence and both would be blamed. In a case of contributory negligence, the crucial question on which liability depends would be whether either party could, by exercise of reasonable care, have avoided the consequence of the other’s negligence. Whichever party could have avoided the consequence of the other’s negligence would be liable for the accident. If a person’s negligent act or omission was the proximate and immediate cause of death, the fact that the person suffering injury was himself negligent and also contributed to the accident or other circumstances by which the injury was caused would not afford a defence to the other.

Contributory negligence is applicable solely to the conduct of a plaintiff. It means that there has been an act or omission on the part of the plaintiff which has materially contributed to the damage, the act or omission being of such a nature that it may properly be described as negligence, although negligence is not given its usual meaning. (See on Negligence, 3<sup>rd</sup> Edn. Para 328). It is now well settled that in the case of contributory negligence, courts have the power to apportion the loss between the parties as seems just and equitable. Apportionment in that context means that damage are reduced to such an extent as the court thinks just and equitable having regard to the claim shared in the responsibility for the damage. But in a case where there has been no contributory negligence on the part of the victim, the question of apportionment does not arise.”

28. PW2, in his evidence stated about the manner in which accident took place. To corroborate his statement, he examined PW4 Sardar Joga Singh, his relative who was following his car in a jeep.

29. The relevant findings of the Tribunal on the point of negligence are as under:-

“Sh. Sethi pointed out that contents of site plan Ex P-10 clearly show that car of the petitioner was not on the Kuchha but was on the metalled road itself. He stated that as per site plan Ex P-10 the accident took place almost in the middle of the road and that there was absolutely no justification for Sardar Narinderjit Singh to take out his hand from inside the car. It was also submitted that body of the bus being bigger in size was to take more space on the road than the Maruti car. According to Sh. Sethi right arm of petitioner Narinderjit Singh severed only because of petitioner’s conduct in having taken out his hand outside. It was also submitted by Sh. Sethi that petitioner cannot be heard to disown the contents of site plan ExP-10 as this document has been relied upon by the petitioner himself. This discrepancy appearing in the statement of petitioner and eye witness Joga Singh from the contents of site plan Ex P-10 could not be explained during arguments by Id. Counsel appearing for the petitioners.”

The Trial Judge further observed;  
“Here it is not a case of a passenger travelling in a vehicle putting his hand outside, but it was the driver of the Maruti Car (Petitioner), who had himself had taken out his hand outside intentionally and himself was not able to keep safe distance from

the bus coming from the opposite side. Then petitioner's case that he had taken the car on the Kucha side and that there was no further space to move his car to the side does not find support from the contents of site plan Ex P-10. Obviously, therefore, it has to be held that petitioner suffered loss of his right arm because of rash and negligent driving of bus no. UP-21-3230 on the part of R-1 and due to negligent driving of Maruti car on his part also. It is contributory negligence of the bus driver and the petitioner which resulted into the unfortunate road accident on 11-4-98. From the contents of the copy of charge sheet Ex P-8 and various documents including OPD card ExPA, loss of right arm of the petitioner in the above road accident is made out due to contributory negligence on the part of both bus driver and the driver of the Maruti car."

30. In civil / compensation cases one is concerned with preponderance of probabilities and not proof beyond reasonable doubt.

31. In the facts of the present case, site plan Ex P-10 clearly shows that the car of the petitioner was not on the Kuchha Road but was on the metalled road itself.

Further, as per the site plan Ex P-10, the accident took place almost in the middle of the road.

32. The appellant has himself relied upon this site plan. As the site plan shows that the accident took place almost in the middle of the road and thus, there was no justification for the appellant to have taken out his hand from the car.

33. Hence, the ground regarding the plea that there was no contributory negligence on the part of appellant, is rejected.

34. In the facts of the present case, the Tribunal rightly assessed 10% of negligence on the part of the appellant and correctly considered the contributory negligence, while awarding compensation.

35. The appellant has stated that he spent more than Rs.1,50,000/- on medical treatment at AIIMS and other nursing homes.

36. However, to prove the medical expenditure incurred, the appellant has placed on record the documents Ex.PW-1 to PW-36. The total expenditure incurred in respect of these bills comes to Rs.6,884.22.

37. The Trial Judge held that;

“As per statement prepared by the Reader of the court mark PX total amount worked out from these documents comes to Rs.6,884-22/-.”

38. No Tribunal can grant compensation for medical expenses on the basis of “assumptions and presumptions”. It may not be possible to keep all the vouchers in respect of every expenses, but still there must be evidence adduced by the appellant to cover at least substantial portion of the claim, especially in the case of an enlightened appellant, who is a lawyer himself.

39. Thus, in the absence of bills produced by the appellant, the Tribunal has rightly awarded

Rs.6,884.22 towards the expenses incurred on medical treatment.

40. The appellant has also stated that he got an artificial limb replaced in place of his amputated right arm from Chandigarh and thus, had to incur expenditure of Rs. 75,000/- besides expenditure of Rs. 25,000 on conveyance and stay at Chandigarh.

41. However, no receipt for purchase of this artificial limb or the fee paid to the doctors for placing it, has been produced on record.

42. The appellant examined Dr. Ashok Khurana as PW3, a practicing Orthopedic Surgeon attached to St. Parma Nand Hospital, who deposed about appellant's having got fitted the artificial limb.

43. However, the Trial Court disbelieved the statement of this witness observing as under:-

“Statement of Dr.Ashok Khurana cannot be believed for various reasons including the one that he had never been a doctor who treated the petitioner. In clear

terms Dr.Ashok Khurana stated as under:-

‘I do not know how the artificial limb replaced in place of right arm of the petitioner operates’.”

44. In this regard, the Tribunal further held;

“After making this statement Dr. Ashok Khurana appears to have made the statement mainly based on his conjectures. Once he admitted that he did not know how the artificial limb operates, his statement that this artificial limb is a cosmetic provision and services provided are just negligible can hardly be believed. Dr. Ashok Khurana though admitted that he did not know how the artificial limb operates stated that petitioner by using this artificial limb cannot put his signatures and lift anything. If this artificial limb is so useless as projected by Dr. Ashok Khurana, then it can hardly be believed that the same would have cost Rs.75,000/- as claimed by the petitioner for which payment, no receipt has been placed on record. Though Dr. Ashok Khurana PW6 claimed that about three months prior to the statement in court on 24-9-2001 petitioner Narinderjeet Singh approached him for consultation. He nowhere claimed that he at that point of time examined the performance of the artificial limb replaced on the right arm of the

petitioner. Since petitioner had already obtained permanent disability certificate from AIIMS there appears to be no point for him to have approached Dr. Ashok Khurana for consultation as alleged by Dr. Khurana. Petitioner's claim for grant of compensation of Rs.1 Lac towards expenditure incurred on replacement of artificial limb included amount spent on conveyance and stay at Chandigarh, thus, cannot be allowed."

45. Thus, in view of this, this ground is also rejected.

46. The appellant in his appeal also stated that after accident he had employed domestic servant and driver for his help on account of his disability.

47. In this regard, appellant examined PW1, Ranbir Singh to prove that after amputation of his right arm, he had employ him as driver on a monthly salary of Rs. 3,500/- and PW3 Pankaj Kumar is stated to be employed as a domestic servant to help the appellant in wearing clothes and doing other personal work like taking bath etc.

48. The Tribunal held that the testimony of both these witnesses cannot be relied upon on account of appellant's statement on the point of his earning and employment of both these persons being inconsistent.

49. The appellant has stated that he had employed PW3 as domestic servant after the accident whereas, PW3 has stated in his statement that initially he was employed with the appellant as a domestic servant on a salary of Rs. 1,500/- per month, besides food and residence to be provided by the appellant at his Shalimar House and was doing household job like cleaning the house and utensils etc. Now, his duties have increased and so his salary was increased to Rs.3,000/-, as appellant was not able to do anything and he required his services very much.

50. However, in cross examination he resiled from his earlier statement and deposed that except serving the appellant, he does not do any other household job.

51. Furthermore, in the claim petition the monthly salary of PW3 has been mentioned as Rs.2,500/- p.m. whereas, PW3 in court stated that his monthly salary is Rs.3,000/-.

52. In the claim petition, the appellant pleaded that before the accident, he was driving his car himself but now he is required to maintain the car for coming to his place of work, for leaving his wife to her working place, i.e. school and sometimes his child to the school etc.

53. PW1 Ranbir Singh stated that he provides the services only to the appellant from 8.40 a.m. till appellant returns to his residence at about 7.30 p.m. He remains with the appellant throughout the day and is receiving a monthly salary of Rs.3,500/- and besides this, the appellant also incurs his miscellaneous expenses during day i.e. for food, tea etc.

54. On the contrary, appellant stated that he provides meals and tea etc. to PW1 only when he had to remain with him overtime.

55. As per findings of the Tribunal, to pay the alleged salary of Rs.3,500/- p.m. to PW1 Ranbir Singh and PW3 Pankaj Kumar to the extent of Rs.3,000/- per month, appellant's monthly income has to be enough to meet this expenditure of about Rs.78,000/- per annum (i.e.  $\text{Rs.3,500/-} + \text{Rs.3,000/-} = \text{Rs.6,500/-} \times 12$ ).

56. The appellant has claimed in the petition and during his statement as PW2, that his monthly income was more than Rs.25,000/- per month before the accident and that he was an income tax assessee for the last 15 years.

57. Income tax returns Ex PA relates to the assessment year 1997-98 (Financial year 1996-97), Ex PB relates to the assessment year 1998-99 and these show, that annual income of the appellant is

Rs.48,985/- and Rs.48,450/- respectively i.e. about Rs. 4,000/- per month.

58. The income tax return for the assessment year 2000-2001, Ex. PW2/A to E shows that the net profit of the appellant is Rs. 1,03,525/-.

59. Thus, it is clear from the perusal of the record that the appellant income has not decreased, rather it increased from previous financial year.

60. Average monthly income proved by these income tax returns Ex. PW2/A to PW2/E for the period subsequent to the injuries suffered by the appellant in the road accident, comes to more than Rs.8,000/-. Thus, these returns does not prove the claim of the appellant that his monthly income was about Rs.25,000/-.

61. Thus, I do not find any infirmity or illegality in the impugned judgment of the learned Tribunal and no ground is made out for interference with the award

passed in this case. The compensation amount awarded by learned Tribunal is just and fair.

62. The present appeal is thus not maintainable and the same is, hereby, dismissed.

63. No order as to costs.

64. Trial Court record be sent back.

September 09, 2008  
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**V.B.GUPTA, J.**