

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

MAC App. No.839 of 2005

% Judgment reserved on: 11th September, 2008

Judgment delivered on: 1st October, 2008

Pradeep Kumar,
S/o Sh.Shyam Sunder Swarup
R/o H.No.411, Sector-14,
Dasundra-201012, Ghaziabad. Appellant

Through: Mr.Anuj Soni, Adv. with
Appellant in person.

Versus

1.National Insurance Com Ltd.
Division No.10, Flat No.101-106
1st Floor, B.M.C. House,
Connaught Place,
New Delhi-1.

2.Parkash, S/o Sh.Ajit Singh
R/o VPO Mundka,
New Delhi-110041.

3.D.T.C.
Genral Manager,
I.P.Estate, New Delhi Respondents.

Through:Ms.Shanta Devi Raman, Adv.
for respondent No. 1.
Ms.Saroj Bidawat for
respondent No.3.

Coram:
HON'BLE MR. JUSTICE V.B. GUPTA

- | | |
|--|-----|
| 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.

Present appeal under section 173 of the Motor Vehicles Act, 1988 (for short as “Act”) for enhancement of compensation has been filed by the appellant, who is the injured in this case.

2. Vide impugned judgment dated 12th July, 2005 passed by Sh. Dharmesh Sharma, Judge, MACT, Delhi (for short as ‘Tribunal’), a sum of Rs. 13,46,360/- was awarded as compensation to the appellant along with interest @ 6% p.a. from the date of filing of the petition till realization.

3. Brief facts of this case are that on 12th June, 2004 at about 1.30 p.m., the appellant was travelling in DTC bus bearing No.DL-1P-B-6517 and was going from

Peera Garhi, Delhi to Bahadur Garh. When the bus reached Bahadur Garh Bus Stand and the appellant was in the process of alighting from the bus, respondent No.2, Prakash who is the driver, started the bus in a rash and negligent manner. As a result thereof, appellant fell down and his right arm was crushed by the tyre of the bus. Due to the impact, the appellant also sustained head injuries and abrasions on other parts of the body. He was hospitalized and later on his right arm had to be amputated by the doctors. Appellant was 45 years of age at the time of accident and amputation of his right hand has resulted in permanent disablement and left him and his family on the verge of vagrancy.

4. The bus in question is owned by respondent No.3-DTC and it is insured with respondent No.1-National Insurance Company.

5. Respondents 2 & 3 driver and owner, contested the claim petition before the Tribunal and in the joint

written statement, inter alia, took preliminary objection that there is no liability on them to pay compensation, since the vehicle was insured with respondent No.1.

6. On merits, it has been denied that the appellant was travelling in the bus or he fell down from the bus due to any rash and negligent driving on the part of the bus driver. In fact, the bus was being driven by bus driver in a proper manner and when the bus was entering the bus terminal of Bahadur Garh, then all of a sudden one passenger tried to get down from the moving bus and though the driver of the bus shouted, but the passenger neither stopped nor listened to him and fell down on the hard surface of the road.

7. Respondent No.1-National Insurance Company has admitted the factum of insurance.

8. It has been contended by the learned counsel for the appellant that the appellant placed two original Disability certificates on record, which was issued by

Govt. Hospital Jhajjar and another certificate issued by Sir Ganga Ram Hospital. The Tribunal failed to appreciate that appellant's left hand was not working since his childhood and after suffering the disability after the accident, his disability has gone up to 100% and thus, the Tribunal wrongly assessed the appellant's disability to be 80%.

9. Other contention is that, the Tribunal failed to consider that after the severe injuries and amputation, a person would not have been able to do any work during the period of the treatment. The treatment of the appellant continued for about six months from the Government as well as private doctor and appellant was forced to leave the job with no other option after his amputation, and appellant lost his present job of sampling developer after amputation.

10. It is further contended on behalf of the appellant that he had to employ a servant for his basic amenity

after the accident but on this account, the Tribunal had given no compensation.

11. Lastly, the Tribunal ought to have considered the future prospects of the appellant.

12. On the other hand, it is contended by the learned counsel for National Insurance Company that the Tribunal has rightly taken the permanent disability as 80% keeping in view the Workmen's Compensation Act, 1923. Further, the doctors who had issued Permanent Disability Certificate have not been examined.

13. Regarding future prospects, the accountant of the company where appellant was working had appeared in the witness box as PW2, but during the course of his statement, he did not state even a single word about future prospects. Moreover, the Tribunal has awarded a substantial amount of Rs.2 Lacs towards permanent disability and this takes care of future prospects, if any, of the appellant.

14. Lastly, it is contended that compensation awarded by the Tribunal is just and fair and no ground for enhancement has been made out.

15. This is not in dispute that the appellant fell down while the offending bus was suddenly started by its driver. There is no denying the fact, that the grievous injuries resultant in amputation of the right hand, are directly attributable to the rash, negligent and wrongful driving of the bus, on the part of its driver.

16. The certificate issued by Delhi Nursing Home, Bahadur Garh and perusal of MLC Ex.CW1/A shows that the claimant sustained crush injuries on his right arm as well as hand apart from Lacerated wound 2cms x 1cm over medial side of the left elbow and deep abrasions 5cms x 5cm over left temporal region.

17. The discharge summary of Ganga Ram Hospital reveals that the right arm above the elbow, was amputated on 12.06.04 and then the claimant was medically treated for stump closure.

18. The Tribunal, on the loss of earning capacity of the appellant has held that;

“As per the Disability Certificate issued by the Office of medical Supdt. Civil Surgeon, Jhajjar, Ex CW1/E, the traumatic amputation of the right arm above elbow with partial weakness of left hand has been certified to be 89% permanent disability. It is indeed unfortunate to observe that claimant has been suffering from partial weakness of his left hand since his childhood and the unfortunate mishap resulted in amputation of his dominant hand. The disability for the purposes of deciding compensation could only be reckoned in regard to loss of right hand only. The claimant was about 45 years of age at the time of accident and that makes multiplier of 13 years applicable as per Second Schedule to the Act. As per Workmen’s Compensation Act, 1923, Schedule 1, amputation below shoulder with stump less than 20.32 Cms from tip of acromion is prescribed to be 80% loss of earning capacity.”

The Tribunal further held;

“Ex facie, the amputation of right hand above the elbow has resulted in the loss of dominant right hand, in the face of the fact that left hand is partially weak, the disability has curtailed the enjoyment of the

essential amenities of life to the claimant. I, therefore, award a sum of Rs.2,00,000/- to the claimant towards permanent disability and amenities of life.”

19. Thus, the Tribunal awarded compensation of Rs.10,23,360/- for loss of earning capacity and Rs.2,00,000/- for permanent disability.

20. As is clear from the facts of the case, the appellant has become unfit for job due to this accident. The appellant was employed as a workman in Sample Development Work and engaged in developing, redesigning and constructing the samples in the field of artificial jewellery, glass weeds/bone and metal (i.e. handicraft items) which are submitted by the customers of the Company and it involved manual functions.

21. The appellant had malfunctioning of his left hand since birth, and this accident made him totally dependent upon others.

22. The disability certificate on record shows that the appellant has suffered 89% permanent disability due to this accident.

23. The Tribunal has wrongly applied the Workmen's compensation Act, 1923, as the present claim petition has been filed under the Motor Vehicles Act, 1988. Thus, the permanent disability as assessed by the Doctor as 89%, ought to have been taken into consideration by the Tribunal. Thus permanent disability is taken as 89%, (rounded off to 90% for the purpose of calculations).

24. The salary of the appellant is Rs.9,000/- p.m. as per evidence. However, the Tribunal for reasons best known to it has not included, House Rent Allowance, while computing the monthly loss of income.

25. House Rent Allowance is not to be deducted from the gross salary of the injured for ascertaining the income, because the House Rent Allowance is part of the salary of the victim-employee. Thus, House Rent

Allowance should be included in the monthly income of the appellant.

26. Taking into consideration the loss of earning at Rs.9,000/- p.m. and 90% permanent disability and applying the multiplier of 13, total amount comes to Rs.12,63,600/- (Rs.9,000/- x 12 x 13 x 90 / 100).

27. The Tribunal has awarded Rs.10,23,360/-, only on this account, while the appellant is thus entitled to additional compensation of Rs.2,40,240/- i.e. (Rs.12,63,600 - Rs.10,23,360).

28. Regarding future prospects, the same cannot be granted unless and until there is evidence to this effect on record. There is no evidence on record to prove that the victim was in a trade where he would have earned more from time to time or he had special merit or qualification or opportunities which would have led to an improvement in his income.

29. Moreover, PW-2 who is the accountant of the company where the appellant was working, had

appeared in the witness box, but he did not utter even a single word about the future prospects of the appellant.

30. In ***Bijoy Kumar Dugar v. Bidyadhar Dutta and Ors., AIR 2006 SC 1255***, the Apex court has observed as under;

“The mere assertion of the claimants that the deceased would have earned more than Rs. 8,000/- to Rs. 10,000/- per month in the span of his lifetime cannot be accepted as legitimate income unless all the relevant facts are proved by leading cogent and reliable evidence before the MACT. The claimants have to prove that the deceased was in a trade where he would have earned more from time to time or that he had special merits or qualifications or opportunities which would have led to an improvement in his income.”

31. Thus, the contention regarding future prospects of the appellant is hereby, rejected.

32. In view of the above discussions, the award given by the Tribunal is modified to the extent that appellant

is entitled to Rs2,40,240/- on account of permanent disability and loss of earning capacity, which is just, fair and equitable.

33. Keeping in view of the prevailing rate of interest, the appellant is granted interest @ 8% per annum from the date of filing of the claim petition i.e. 03.09.04 till realization, on the enhanced amount of compensation.

34. Accordingly, the appeal of the appellant stands allowed to the above extent.

35. No order as to costs.

36. Trial Court record be sent back.

1st October, 2008
Bisht

V.B.GUPTA, J.