

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

MAC APPEAL No.281 of 2008

% Judgment reserved on: 1st May, 2008

Judgment delivered on: 9th May, 2008

New India Ass. Co. Ltd.
Divisional Office-310700,
Second Floor, Vandna Building,
11, Tolstoy Marg,
New Delhi

.....Appellant

Through: Mr. Rakesh Mittal with Ms.
Meenu Pandey, Adv.

Versus

1. Rakesh Kumar,
S/o. Sh. Raghuraj,
R/o House No.244, Gali Jogipada,
Sant Nagar, Burari, Delhi
2. Shri Dan Singh (Driver),
S/o. Sh. Jaggi Pehlwan,
R/o. Village Sasarput, Post Kol, P.s. Farhar,
Distt. Mathura (U.P.)

Present address:

M/s. Rocky Tempo Transport Co,
U.P. Border, near Jyoti Cinema,
Ghaziabad (U.P.)

3. Sh. Trilok Singh, (Owner),
S/o. Sh. Santa Singh,
R/o. 1089, Janta Flat, Nand Nagri,
Delhi.

.....Respondents

Through: None.

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 by New India Assurance Company Ltd. against the judgment dated 17.01.08, passed by Ms. Neena Bansal, Judge, Motor Accident Claims Tribunal (for short as "Tribunal"), TisHazari Court, Delhi.

2. Contextual facts depict that on 13.07.06 at about 9 pm, while Respondent no.1, Sh. Rakesh Kumar was standing at Burari bye-pass, Outer Ring Road, Ganda Nala side, waiting for a bus, a tempo bearing no. DL 1LB 6226 which was being driven by Sh. Dan Singh came in a rash and negligent manner from the side of G.T.K. bye-pass at a high speed and hit Rakesh Kumar and two other persons and thereafter, hit a Tata Indica Car resulting in injuries to

the Rakesh Kumar. He was taken to Trauma Center and thereafter to LNJP Hospital for treatment.

3. Rakesh Kumar has claimed compensation in the sum of Rs.10lac from respondent no. 2 &3 herein and the appellant.

4. The learned Tribunal vide impugned judgment, awarded compensation of Rs.1,41,000/- under different heads along with interest @ 7.5% per annum from the date of filing of the petition till its realization.

5. It is contended on behalf of New India Assurance Company that the award of Rs.1,40,000/- is very high and based on totally wrong assumptions and calculations. Further, it is submitted that the Tribunal has wrongly awarded Rs.5,000/- for special diet without any basis and evidence as there is no evidence on record on this aspect. The Tribunal also ignored the decision of Apex Court that if no evidence is produced on record regarding future prospects on the income of the deceased then future prospects cannot be granted. Thus, the Ld. Tribunal has erred in appreciating the future prospects of the deceased.

6. Rakesh Kumar has deposed that he was 18 years old and was doing private service and was earning Rs.5,000/- per month. However, neither he disclosed the details of the place where he was working nor he has produced any document in proof of his income.

7. Rakesh Kumar has also deposed that he had suffered fracture of left leg and amputation of big toe of left foot. The discharge card is Ex.PW1/1 according to which he remained admitted in the hospital from 13.07.07 to 27.07.07. He had suffered crush injury on left foot. The debridment and fixation with K wire was done under S.A. and was advised to take various medicines and was also advised for the dressing of his wound daily with betadine. His other OPD card are Ex.PW1/2, 4 & 6, which shows that he had continued visiting the hospital regularly till 10.10.06. He had also undergone plastic surgery for covering of his wound. His medical bills are Ex.PW1/9 to 1/15 which are approximately in the sum of Rs. 3,900/-.

8. It is not expected that an injured should meticulously retain all the bills pertaining to his medical treatment,

special diet and conveyance etc. Since, the injured suffered crush injury and permanent disability and also remained admitted in Hospital, there is strong presumption that he must have taken special diet such as fruits, juices, milk etc. and must have spent some amount on his conveyance for visiting Hospital or Doctors.

9. The Tribunal has observed that the injured was not able to work for four months. Further, as per Minimum Wages Schedule as guidelines, his income has been assessed by Tribunal as Rs.3,271/- pm and has been awarded a sum of Rs.13,084/-(3,271x4) which is rounded off to Rs. 13,500/-, towards loss of income, which under any circumstances cannot be said to be excessive. Keeping in view the nature of injuries sustained by him.

10. Perusal of the impugned judgment shows that the Tribunal has awarded an amount of Rs. 37,681, which is rounded off to Rs.40, 000/- towards loss of earning capacity suffered by the respondent no.1 by taking overall disability as 6%. The 6% of his salary works out to Rs.2,355.12/- (39,252x6%). Considering that he was a young boy of 18

years, the multiplier of 16 years is the appropriate multiplier for calculating his disability.

11. Thus, the compensation awarded by learned Tribunal to the injured in this case is just and fair and I do not find any infirmity in the impugned judgment.

12. Therefore, the appeal is, hereby, dismissed.

13. Copy of the judgment be sent to the Trial Court.

**V. B. GUPTA
(JUDGE)**

**9th May, 2008
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