

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

Reserved on: 28th November, 2011

Pronounced on: 2nd December, 2011

+ **MAC APP. 719/2010**

JAGDISH PRASHAD SINGH Appellants

Through: Ms. Deepti Gupta, Adv.

Versus

UMED & ORS. Respondents

Through: Mr. Pankaj Seth, Adv. for Respondent
No.3.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appellant Jagdish Prasad Singh impugns the award dated 01.06.2010 passed by Motor Accident Claim Tribunal (the Tribunal) whereby the claim petition under Section 166 of Motor Vehicles Act, 1988 preferred by him was dismissed on the ground that it was not established that the Appellant suffered injuries in the accident in the manner as alleged by the Appellant.
2. I have perused the Tribunal's record and have heard Ms. Deepti Gupta, learned counsel for the Appellant and Mr. Pankaj Seth, learned counsel for the Respondents No.3.

3. It is urged by the learned counsel for the Appellant that there was ample evidence on record to establish the involvement of TATA 407 No.DL-1LA-6097 in the accident and rashness and negligence on Respondent No.1's part. The Tribunal, argued the learned counsel for the Appellant, committed grave error in not believing the Appellant's testimony in the shape of affidavit Ex. PA, which was not challenged in cross-examination on the factum of accident and culpable negligence on Respondent No.1's part.

PROOF OF NEGLIGENCE:

4. In order to prove the accident and rashness/ negligence on Respondent No.1's part the Appellant proved FIR No.324/1998 P.S. Bagpat, which was recorded on the statement of Appellant's brother Sripal. The Tribunal doubted the Appellant's version mainly on the ground that the number of the two wheeler on which the Appellant was riding on the pillion was not mentioned in the FIR. To my mind that by itself does not negate the accident. It is important to note that the number of the offending vehicle i.e. TATA 407 No.DL-1LA-6097 was clearly mentioned. The Appellant deposed that Umed Singh (Respondent No.1) while driving vehicle No.DL-1LA-6097 rashly and negligently came from Taitri side and struck against their two wheeler scooter. He and his brother fell down o the road.

5. The Appellant was cross-examined on behalf of driver and the owner (Respondents No.1 & 2) as also on behalf of National Insurance Co. Ltd. (Respondent No.3). No suggestion was given to the Appellant that the accident did not take place. Rather a suggestion was given on behalf of Respondents No.1 & 2 that it was the Appellant, who was driving the scooter. Thus the factum of accident was admitted by the Respondents No.1 & 2. The factum and the manner of the accident was not even disputed by the Respondent No.3 in the Appellant's cross-examination.
6. The Appellant was immediately taken to the Govt. Medical Officer in Bagpat and was later removed to ESI Hospital, Basai Darapur as the Appellant enjoyed ESI benefits being an employee of Govt. Servants Co-operative House Building Society Limited, "Kalyan Kendra", 9, Pashchimi Marg, Vasant Vihar, New Delhi-110057. From the attested copy of the FIR, attested copy of the treatment received from the Medical Officer CHC, Bagpat and PW-1's testimony, it is established that the accident took place on account of culpable negligence of Respondent No.1 while driving TATA 407 No.DL-1LA-6097.

QUANTUM OF COMPENSATION:

7. The Appellant suffered serious injuries in the accident resulting in permanent physical impairment to the extent of 40% in respect of right lower limb. The Appellant was working as a

carpenter with Govt. Servants Co-operative Group House Building Society Ltd., Vasant Vihar. According to the PW-2, he was getting a salary of ₹ 2,801/- at the time of accident. The Appellant continued to get the same salary and normal increments even after the physical impairment in respect of his right lower limb. It was admitted by PW-2 Tarun Taneja produced by the Appellant that his salary rose to ₹ 5,757/- on the date of recording his statement on 03.03.2005. Since, the Appellant did not suffer any functional disability and continued to earn his wages and increments, he would not be entitled to any compensation under the head of loss of earning capacity [*Raj Kumar v. Ajay Kumar & Anr.*, (2011) 1 SCC 343].

8. The Appellants in his affidavit Ex. PA testified that he took leave for ten months i.e. from 01.09.1998 to 02.07.1999. He deposed that he lost salary for these 10 months @ ₹ 4,149/- per month. The factum of losing salary was not disputed in cross-examination. PW-2 corroborated the Appellant's testimony to the extent that the Appellant was on leave from 01.09.1998 to 02.07.1999. The witness did not state as to how many leaves were on pay and how many were without pay. In any case, the Appellants would be entitled to be compensated for the loss of leaves also even if he was paid salary. Though, the Appellant claim his salary to be ₹ 4,149/- but it was proved to be only ₹ 2,801/- on the date of accident. The Appellant is thus entitled to a sum of ₹ 28,000/- on account of loss of salary/ loss of leave.

9. After the accident, the Appellant was immediately taken to CHC, Bagpat by his brother Sripal and MLC dated 01.09.1998 was prepared. He was then admitted in ESI Hospital, Basai Darapur on the same day and was operated on 05.10.1998. He was discharged from ESI Hospital on 22.10.1998. The Appellant deposed that during the period he was on leave, he visited the Hospital twice a week. He spent ₹ 20,000/- on conveyance, ₹ 15,000/- on his diet @ ₹ 50/- per day, engaged an attendant @ ₹ 1,000/- for 10 months. In his affidavit Ex. PA, the Appellant claimed ₹ 50,000/- towards pain and suffering.
10. The Appellant was a resident of Vasant Vihar. Though, the actual distance between the Vasant Vihar and Basai Darapur has not come on record, I would make a guess and taking the rate in the year 1998-1999 would award conveyance charges of ₹ 5,000/- @ ₹ 100/- per visit (for TSR) towards 50 visits.
11. Considering the nature of injuries suffered by him, the Appellant needed special diet and I would assess the compensation under this head @ ₹ 25/- per day for 300 days totaling ₹ 7,500/-.
12. The Appellant remained admitted in the Hospital for a little less than 2 months. Even thereafter the Appellant would have needed an attendant for some time. I would award ₹ 1,000/- for services of an attendant for 3 months and thereafter at the time of his visits to the Hospital I award a lump sum amount of ₹

2,000/- Thus, the Appellant is entitled to a sum of ₹ 5,000/- in all towards the conveyance charges spent by him during the period of his treatment.

13. The Appellant suffered permanent disability in the left lower limb to the extent of 40%. He would have difficulty throughout his life in squatting, running and using public transport. The Appellant cannot be compensated in terms of money for the pain and suffering and for loss of amenities in life, yet an effort has to be made to award adequate sum of money that would put the party, who has suffered, in the same position as if he had not suffered the wrong. In the circumstances of the case, I award the Appellant a sum of ₹ 25,000/- towards pain and suffering and further sum of ₹ 50,000/- towards loss of amenities and disfigurement. The compensation awarded is extracted hereunder in tabulated form:

Loss of pay/ leave	:	₹ 28,000/-
Conveyance Charges	:	₹ 05,000/-
Special Diet	:	₹ 7,500/-
Attendant Charges	:	₹ 05,000/-
Pain & suffering	:	₹ 25,000/-
Loss of amenities in life and disfigurement	:	₹ 50,000/-
Total		₹ 1,20,500/-

The Appellant is entitled to a total compensation of ₹ 1,20,500/- along with interest @ 7.5% from the date of filing of the petition till realization of the amount and Respondents No.1 to 3 (being driver, owner and Insurer) are jointly and severally liable to pay the same. Respondent No.3 being the Insurer is directed to satisfy the award within a period of six weeks.

14. The appeal is allowed in above terms. No cost.

(G.P. MITTAL)
JUDGE

December 2, 2011
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