

\* THE HIGH COURT OF DELHI AT NEW DELHI

+ MAC APPEAL No.15/2009

Reserved on: 23.09.2011  
Date of Order: 30 .09.2011

OM PRAKASH

..... Appellant

Through: Mr. S.N. Parashar, Adv. for the  
appellant.

Versus

BHAGAT SINGH & OTHERS

..... Respondents

Through: Mr. S.L. Gupta, Mr. Ram  
Ashray, Advocates for R-3.

**CORAM:**  
**HON'BLE MR. JUSTICE M.L. MEHTA**

- |    |                                                                       |    |
|----|-----------------------------------------------------------------------|----|
| 1. | Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not ?                               | No |
| 3. | Whether the judgment should be reported in the Digest ?               | No |

**M.L. MEHTA, J.**

1. This appeal is directed against the award dated 17<sup>th</sup> March, 2008 of the Motor Accident Claim Tribunal (hereinafter referred to as 'the Tribunal' for short) as passed in claim petition No. 104/2007 filed by the appellant herein whereby he had sought compensation on account of the injuries sustained in the road accident which took place on 10<sup>th</sup> October, 2003 when he was driving Truck No. KA-05-B-5990 and was struck by another truck bearing registration No. HR-30-2725 being driven by its driver

Bhagat Singh, respondent No. 1 herein, in rash and negligent manner. The said truck was stated to be owned by Surender Singh, Respondent No. 2 herein, and was insured with respondent No. 3, the New India Assurance Company Ltd. Vide the impugned award, the Tribunal awarded compensation of Rs.3,05,077/- (inclusive of interim award of Rs.25,000/- passed on 18<sup>th</sup> March, 2005) with simple interest @9% per annum from the date of filing of the petition i.e. 7<sup>th</sup> January, 2004 till realization. Respondent No 3 being the insurer was directed to indemnify the appellant/claimant. The compensation was made up of Rs.35,677/- on account of purchase of medicines and payment made for private OPD, Rs.20,000/- on account of conveyance, Rs.25,000/- on account of special diet and Rs.2,24,400/- on account of loss of earning due to disability. The Tribunal has taken overall disability of the appellant/ claimant to the extent of 20% as against the disability of 70% of right lower limb as per the disability certificate. The learned Tribunal applied the multiplier of 17 and arrived at this figure of Rs.2,24,400/-.

2. The appellant has assailed the impugned award claiming enhancement of compensation on various counts.

3. The foremost contention of the appellant was that after the accident he was remained in the hospital from 30.10.2003 till

14.11.2003 and he was readmitted from 14.11.2003 till 23.11.2003. He had relied upon the bills Ex. PW2/A and Ex. PW2/B. However, being the photocopy of the original bills, the Tribunal did not rely upon these two bills and denied the claim of the appellant of the amount of Rs.1,08,000/-. In this regard it is seen that the Tribunal has, apparently, erred in ignoring these bills inasmuch as photocopies of these bills were taken on record after the originals thereof were seen and returned. That being so, these bills being the photocopies of the originals, were rightly proved by the appellant from the statement of Ravinder Kumar, Executive, Jaipur Golden Hospital, whereby the appellant was admitted and got treatment. In this view of the matter, the appellant would be entitled to the amount of Rs.1,08,000/- towards medical expenses incurred for the treatment.

4. With regard to claim of Rs.90,000/- sought to be set up by the appellant allegedly incurred for the artificial limb, the Tribunal recorded that receipt Ex. PW3/12 stating that Rs.90,000/- was paid by the appellant to Sri Devi Talab Mandir Charitable Hospital, Jalandhar City, did not contain details regarding hospitalization of the appellant for hip replacement and (it was noted in this certificate cum receipt that same was not valid for medico legal purpose) hence it was not admissible keeping in view the factum

of injury in right limb of the injured/appellant. It was also noticed that this certificate cum receipt mentioned it to be not valid for medico legal purpose. The Tribunal recorded that the same could have been proved by summoning some witness from the said hospital and in the absence of the same the receipt Ex. PW3/12 was not reliable. With this finding of fact of the Tribunal on record, this court pointed out to learned counsel for the appellant that the receipt was for the replacement of hip and not for artificial limb as was stated by the appellant in his statement. The learned counsel sought adjournment for seeking instructions of the appellant. It is noted that no clarification has been given by the counsel either verbally or in his affidavit dated 26.08.2011 which was filed in pursuance of the directions of this Court. In view of this, I do not intend to interfere with the finding of fact recorded by the Tribunal and I am not persuaded to rely upon the receipt Ex. PW3/12 for the reasons as recorded by the Tribunal.

5. The main challenge to the award was with regard to the extent of disability as assessed by the Tribunal. As per the Tribunal, the disability certificate was produced by the appellant himself while making statement. However, neither the Doctor, who gave the certificate, nor any official of the hospital has been examined to prove the same. Mere production of a copy of

disability certificate will not be a proof of extent of disability stated in the certificate and only the Doctor who treated the patient or who examined him medically and assessed the extent disability can prove the certificate after he stood the test of cross examination with reference to the certificate. In any case, the Tribunal noted the disability to be 70% in relation to right lower limb and assessed the functional disability and also earning capacity due to this disability to be 20%. The appellant suffered amputation below knee up to 8 cm in the right lower limb, but, there is no evidence on record, much less medical evidence led by the appellant to show that he was incapacitated to do any other avocation and earn his livelihood. In the given fact and circumstances of the case it could not be said that the appellant was incapable of doing any activity or avocation because of his disability. In the absence of there being any cogent evidence on record in this regard and taking the disability to the extent of 70% in relation to lower limb, the functional disability in relation to whole body of the appellant was rightly assessed as 20% and so was the percentage of loss of his earning capacity. I do not see any infirmity or perversity in making this assessment of 20% disability in earning capacity of the appellant.

6. The appellant was aged about 38 years and as per the judgment of the Supreme Court in ***Sarla Verma and Others v Delhi Transport Corporation and Another*** [2009 INDLAW SC 488], a multiplier of 15 was to be applied instead of 17 as has been applied by the Tribunal. If that was so, the appellant was entitled to compensation of Rs.1,98,000/- only on account of loss of income in place of Rs.2,24,400/-, that has been granted by the Tribunal. However, since there is no challenge to this by the respondent, I do not intend to interfere in application of multiplier of 17 by the Tribunal and the compensation granted by him of Rs.2,24,400/-. In the given facts and circumstances of the case I also do not see any infirmity to the award of compensation of Rs.1,00,000/- on account of pain and suffering, Rs.20,000/- on account of conveyance and Rs.25,000/- on account of special diet. In addition to what has been awarded by the Tribunal, I am of the view that some amount of compensation needs to be awarded to the appellant on account of loss of amenities and loss of expectancy of life. In the totality of facts and circumstances, Rs.25,000/- each is assessed as compensation on these counts.

7. In view of the above discussion, the appellant/claimant is entitled to a total compensation of Rs.5,63,400/-. Consequently, the appellant would be entitled to enhanced compensation of

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Rs.1,58,000/- which the respondent No. 3, being the insurer, is directed to pay to the appellant within 30 days of this order without interest and thereafter with interest @7.5 per cent from the date of this order till realization.

8. The appeal stands disposed accordingly.

**M.L. MEHTA  
(JUDGE)**

September 30 , 2011/awanish