

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

Reserved on: 15th May, 2012
Pronounced on: 17th May, 2012

+ **FAO.No.94/2002**

YAD RAM SHARMA Appellant
Through: Mr. R.K. Dhawan with
Ms. Shweta Joshi, Advocates.
Versus

HARI SINGH & ANR. Respondents
Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appellant seeks enhancement of compensation of ₹2,25,000/- awarded to him for having suffered injuries in an accident which occurred on 16th February, 1992.
2. The compensation awarded was reduced by 50% on the ground that the Appellant was himself negligent and contributed to the accident.
3. The compensation awarded is tabulated hereunder:-

Sl.No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Medical Expenses	₹2,03,357/-
2.	Conveyance Expenses	₹ 20,000/-
3.	Special Diet	₹ 10,000/-
4.	Loss of earnings (` 3000x24 (months)	₹ 72,000/-
5.	Pain & Suffering	₹45,000/-
6.	Loss of amenities & normal happy life, loss of future earning capacity & shortening of life span	₹1,00,000/-
	Total	₹ 4,50,000/-

4. According to the Appellant on 16th February, 1992 at about 1.30 p.m., he was proceeding to Sangam Vihar from Sarvodaya Enclave, when he was hit by a DTC bus bearing No. DEP 9892, which was being driven in a rash and negligent manner. He received multiple fractures and injuries on his right lower limb. He was immediately removed to AIIMS and was then shifted to National Chest Institute on 18th February, 1992.
5. In order to establish his case, the Appellant examined as many as eight witnesses. First of all I would deal with the question of negligence or for that matter the question of contributory negligence.

6. Respondent Hari Singh, the driver of the DTC bus was acquitted for the offence punishable U/s 279/338 IPC by a judgment dated 17th April, 1998 passed by the Learned M.M. New Delhi. It is well settled that a Claims Tribunal or a Court while dealing with a claim petition under Section 166 of the Act has to form an independent opinion if culpable negligence on the part of the driver of the offending vehicle has been established or not. It has to be borne in mind that the standard of proof required in a criminal case in establishing the guilt of an accused is beyond reasonable doubt whereas in a claim petition the negligence is required to be proved on the touchstone of preponderance of probability. (*Bimla Devi and Ors. v. Himachal Road Transport Corporation and Ors.*, (2009) 13 SC 530, and *Parmeshwari Devi v. Amir Chand and Ors.*, (2011) 11 SCC 635).
7. Turning to the instant case, the Claims Tribunal dealt with the issue of negligence in para 5 of the judgment. It would be fruitful to extract the same hereunder for ready reference:

“Claimant Yad Ram who has appeared as PW-8 and the pillion rider on the scooter of the claimant Shri Raghu Nath has been examined as PW -3. PW-6 is a police official, who proved copy of the FIR as Ex. PW 6/1 and PW 5 is an official from AIIMS where the claimant had been remained after this accident and witness proved MLC Ex. PW 5/1. PW-3 as well claimant have stated on oath that on 16.02.1992 they were coming on a two wheeler scooter from survodhya Enclave side and were to go to Sangam Vihar. Scooter reached T Point Saket,

M.B. Road and scooter took left turn towards Khan Pur. On that very point of time a DTC bus DEP 9892 hit scooter from back side and the scooter fell on the road. Right leg of the claimant Yad Ram came under the wheel of the bus and claimant was dragged upto about 10 feet. As against statement of these two witnesses, respondent driver of the DTC bus has also appeared in evidence as RW-1. He states on oath that he was coming from village Mandi side i.e. from Mehrauli side and reached near Saidulazab village. He slowed down the speed of his bus as the bus was approaching bus stop. Meanwhile a scooterist with a pillion rider came from left side of the bus from left side approaching road and scooter was being driven in a rash and negligent manner and it came on the main road. On seeing the bus, scooterist lost control over his vehicle and he met with this accident entirely due to his own fault and negligence. In cross-examination respondent admits that at the time of impact scooter was ahead of the bus and the bus had hit the scooter from behind. Ld. claimant counsel took up this admission in cross-examination and emphasized the claimant case that when scooter was hit by bus from its behind then fault has to be held on the part of bus driver as the bus driver ought to have slowed down speed of his bus before bus hit scooterist. On the other hand it has been argued from respondent side that claimant Shri Yad Ram Sharma in his cross-examination says that speed of his scooter at the time of accident and at the time when he took left turn on T Point M.B. Road towards Khan Pur was about 30-35 kmph. But then he further says in cross that speed of the bus was around 60-70 Kmph. Claimant further admits in cross that when he took left turn on the M.B. Road the bus was around 40-50 feet behind on the main road coming from Mehrauli side. He further says that the place where the bus collided with the scooter was about 15 feet from the point he had taken turn on the road towards left. While appreciating this evidence site plan Ex. PW 6/2 which police had prepared regarding

this accident has also been referred to by both sides counsel and its correctness has not been disputed. It has been submitted from respondent side if claimant driving two wheeler scooter has taken left turn on the main M.B. Road having come from the approach road at T. Point then speed of his scooter as claimant admits as 30-35 Kmph was a negligent driving. It was duty of the claimant while approaching main M.B. Road having come from approach road to slow down the speed of his scooter considerably and rather to stop his vehicle at T. Point before proceeding to take left side turn and to see that no vehicle was coming from his right side on the main M.B. Road and if there was no vehicle only then to proceed. It has been referred from site plan Ex. PW 6/2 that the place of impact is almost middle of the road and the width of one side of this double road is about 26 feet. It has been argued that if scooterist claimant by his own unreasonable high speed of the scooter while approaching main M.B. Road has come almost on the middle of the road then accident must taken cause of his own fault and negligent driving. Acquittal Judgment from the Criminal Court has been quoted in support of this submission. I have appreciated these arguments and evidence and I reach a conclusion that cause of accident is a fault and negligent driving on the part of claimant himself as well on the part of driver of DTC bus in the ratio of 50:50. Admittedly claimant is coming from Saket side which is approach road and merges into main M.B. Road at T. Point. While approaching main M.B. Road a reasonable and proper caution on the part of claimant scooterist required claimant to slow down speed of his scooter while approaching main M.B. Road and to take left turn on the road only after observing traffic on the road. As claimant himself admits in cross that speed of his scooter was around 30-35 Kmph when he took left turn, the position is made more clear by the site plan Ex. PW 3/1 which shows that the accident has taken place just on the middle of the road and width of the one side

road of this double road is around 26 feet. Certainly driving scooter at a speed of 30-35 Kmph while approaching the main road from approaching road was disregard to a cautious driving. It was duty of the claimant to slow down speed of his scooter considerably so that while approaching main M.B. Road scooter abruptly did not come in the middle of the road I find claimant failed to observe this reasonable caution. Then respondent driver of the DTC bus cannot also escape the consequences of negligent driving. If driver is on the main M.B. Road, while approaching t. Point he ought to have slowed down speed of his bus. The fact that scooter as well the claimant were dragged on the road for a distance of about 10 feet as claimant has deposed which should not disbelieved keeping in view finally the nature of injury claimant suffered, fact indicates the speed in which the bus was being driven. It is a fact that claimant had already entered inside the main M.B. Road and as claimant says in cross-examination that he had already covered 15 feet when the bus hit his scooter from behind. The circumstances indicate that bus was being driven in a speed without caring that it was entering T. Point junction on the main road and continuing such a speed was a negligent driving. Had speed of the bus been controlled by its driver respondent then even if impact would have been inescapable, its gravity and effect would not have been so sound and serious that bus dragged the scooter of the claimant for a distance of around 10 feet on the main road.”

8. The site plan Ex.PW6/2 was proved by PW Atiq Ahmad who was posted as Duty Officer in the case. The correctness of the site plan is not disputed by the Appellant. A perusal of the site plan shows that bus No. DEP 9892 was coming on main Mehrauli Badarpur Road. It was proceeding towards Khanpur from Mehrauli. The two wheeler driven by the Appellant

came from a side road and entered the main Mehrauli Badarpur Road. The accident took place just near the T. Point. The two wheeler at the time of the accident was almost in the middle of the left carriage way (a little towards right side). This clearly indicates that the two wheeler driver i.e. the Appellant was either totally unmindful of the traffic coming on the main road or he was driving the two wheeler at an excessive speed. In any case, anybody entering the main road from a side road is expected to slow down and to wait for the clearance of the traffic. That having not been done by the Appellant, he was equally guilty of contributory negligence irrespective of the fact that the DTC bus was driven at a high speed by Respondent No.1. Thus, the finding of fact with regard to the contributory negligence reached by the Claims Tribunal cannot be faulted.

9. Now I shall advert to the compensation payable to the Appellant. Section 168 of the Motor Vehicles Act enjoins the Tribunal to make an award determining the amount of compensation which appears to be just. In the case of *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors. (1994) 2 SCC 176*, it was held as under:-

“.....that the determination of the quantum must answer what contemporary society "would deem to be a fair sum such as would allow the wrongdoer to hold up his head among his neighbours and say with their approval that he has done the fair thing". The amount awarded must

not be niggardly since the "law values life and limb in a free society in generous scales". At the same time, a misplaced sympathy, generosity and benevolence cannot be the guiding factor for determining the compensation. The object of providing compensation is to place the claimant(s), to the extent possible, in almost the same financial position, as they were in before the accident and not to make a fortune out of misfortune that has befallen them."

10. The details of the surgeries undergone was deposed in detail by PW 4 Dr. A.P. Singh, Orthopaedic Surgeon who was the consultant at National Chest Institute at the time of the Appellant's treatment. He deposed as under:-

"I myself examined Sh. Yad Ram on 18.02.1992 and thereafter on many occasions and still Sh. Yad Ram is under my treatment. Sh. Yad Ram was suffering from compound fracture, dislocation of right knee lateral femoral condole right knee with gangrene of the entire circumfrancial skin lower one third right thigh and upper half right leg as well as loss of lateral collateral ligament and popliteus tendon and distruction of the entrolateral knee capsule. In addition he was suffering from acute Oliguria due to drug Nephrotoxicity and Septiciaemia. He had to be admitted in National Chest Institute between 18.02.1992 and 18.04.1992 and underwent three surgeries in which devriedment of wounds fixation of fractures and multiple skin drafting were done. These operations were done on 19.02.1992, 18.03.1992 and 13.04.1992. He underwent paritionial dialysis twice and 25 blood transfusions. Sh. Yad Ram present in the court and I identify him who is under my treatment till date. I issued a certificate with regard to the permanent disability and discussion of right knee joint on 19.08.1994 which Ex. PW 4/1. It bears my signature and is written by me. I also issued the detailed certificate

with regard to the treatment of Sh. Yad Ram Sharma who was injured in the road accident with DTC Bus on 16.02.1992 which is Ex. PW 4/2. The certificate is written and signed by me. I also issued certificate on 19.09.1993 in respect of the on going treatment of Mr. Yad Ram Sharma which is Ex. PW 4/3. It bears my signature. The petitioner Yad Ram Sharma also requires further surgery in view of the severe changes, of destruction in the knee joint. He is likely to require further surgery which include removal of kanils and possibility later on total knee replacement and degeneration sets in. Petitioner is visiting me once in a every month for regular check up because of complaints of pain, weakness in the knee, break down of skin, dressing. The petitioner likely to have subsequently more problems because of total destruction of the knee and removal which may be required afterwards as I have detailed above. The petitioner will be further required to go minimum two surgery afterwards and one surgery is required present for removal of nails. The right leg will never regain its proper shape cosmetically which has been disfigured because of injuries and due to surgeries which are required to be performed at regular intervals. The patient is suffering from permanent disability. The petitioner will never be able to squatt on the floor through his life. In the initial treatment the cost has been incurred by the petitioner to the extent of lakhs on medicines, surgery and stay in the nursing home and the petitioner on further regular check up and on treatment expenses which are might be incurred by the petitioner on its regular check up should be between ₹30,000/- to ₹35,000/-. The petitioner is further required to undergo two more surgeries. There were other injuries and treatment which have been carried out by other doctors and nursing home.”

11. I shall now deal with the compensation under each head.

MEDICAL EXPENSES:

12. The Appellant claimed that he had already spent a sum of ₹3,05,397/- on his treatment. He proved on record the bills Exs. P-1 to P-31 in respect of his hospitalization, tests undertaken and the medicines purchased. The Appellant himself totaled it up at Mark-X as ₹2,03,357/- which was awarded to him by the Claims Tribunal.
13. The Appellant's grievance is that he was not awarded a sum of ₹18,000/- and ₹14,500/- regarding purchase of 21 units of blood and customized stockings respectively. The Claims Tribunal observed that some of the bills on record were in respect of purchase of the customized stockings i.e. Exs. P-131, P-81, P-89, P-90 & P-92. As it is not the Appellant's case that he had misplaced some of the bills for purchase of the stockings. Thus Exs. P-81, P-89, P-90, P-92, and P-131 itself totals up to ₹ 6,275/-. The Claims Tribunal was, therefore, justified in granting a sum of ₹2,03,357/- towards medical treatment including the sum for the knee stockings purchased by him.
14. The Appellant claimed that he spent ₹ 18,000/- for purchase of 21 units of blood. This was corroborated by PW-4 Dr. A.P.Singh. This part of the Appellant's testimony was not challenged in cross-examination thus although the Appellant has not placed on record any receipt regarding purchase of blood but considering the nature of injuries, three surgeries

undergone by him and his unchallenged testimony, I would award him a sum of ₹18,000/- towards purchase of 21 units of blood.

CONVEYANCE CHARGES:

15. The Appellant testified that he spent ₹65,650/- on conveyance (Auto Rickshaw charges) from 20.02.1992 to 30.06.1993. He has not stated the total number of visits to the hospitals/various doctors and the amounts spent on each visit. As per the Claim Petition, the Appellant was a resident of Sangam Vihar and most of his visits could be presumed to have been to National Chest Institute and Research Centre, Gautam Nagar. Although the Appellant has not placed on record any bills or documents regarding his visits to the hospital/consulting doctors, yet I would assume that the compensation of ₹20,000/- awarded under this head was sufficient to defray conveyance expenses for at least 100 visits as per the scale of auto rickshaw fares in the year 1992-93. No interference is called for in the award under this head.

SPECIAL DIET:

16. The Appellant claimed a sum of ₹23,890/- for purchase of fruits and juices. No bills have been proved for the same. Considering the nature of injuries, three surgeries undergone by him and the long duration of the treatment, the compensation of

₹10,000/- awarded towards special diet needs to be enhanced. I accordingly enhance it to ₹20,000/- from ₹10,000/-.

LOSS OF EARNING:

17. The Appellant was awarded a compensation of ₹72,000/- for loss of earning for 24 months @ ₹3000/- per month. It is urged by the Learned counsel for the Appellant that the Appellant had an income of ₹6,000/- per month at the relevant time. No documentary evidence was placed on record in respect of this income. Any income beyond ₹30,000/- per annum i.e. ₹2500/- per month was taxable. In the absence of any Income Tax Return or any other evidence, the Claims Tribunal was quite benevolent in awarding a sum of ₹72,000/- towards loss of earning.

PAIN AND SUFFERING:

18. It is difficult to measure in terms of money the pain and suffering which is suffered by an injured on account of the serious injuries caused to him in a motor accident. Since the compensation is required to be paid for pain and suffering, an attempt must be made to award compensation which may have some objective relation with the pain and suffering undergone by the victim. For quantifying the compensation under this head, the Claims Tribunal and the Courts normally consider the nature of injury, the parts of body where the injuries were sustained; surgeries (if any) undergone by the victim,

confinement in the hospital and at home and the duration of the treatment. Moreover, the compensation has to be awarded considering the value of money on the date of the accident.

19. In this case, the accident occurred in the year 1992. In case of *Govind Yadav v. New India Insurance Company Ltd. (2011) 10 SCC 683*, the Supreme Court in case of amputation of leg above knee awarded a compensation of ₹1.5 lakhs towards pain and suffering in an accident which occurred in the year 2004. In the instant case, the compensation of ₹45,000/- awarded towards pain and suffering seems to be inadequate considering that the Appellant suffered multiple fractures on the right leg, suffering from compound fracture, lateral femoral condyle of right knee with gangrene of the entire circumferential skin in the lower one third of the right thigh and upper half of right leg as well as loss of the lateral collateral ligament and popliteus tendon and destruction of the anterolateral knee capsule. He also suffered acute Oliguria due to drug Nephrotoxicity and Septicaemia. The same is enhanced to ₹60,000/-.

LOSS OF AMENITIES AND LOSS OF FUTURE EARNING CAPACITY:

20. A compensation of Rs.1 Lakh was awarded towards loss of amenities and loss of future earning capacity. It is always appropriate to grant compensation separately under pecuniary and non-pecuniary heads.

21. First of all, I shall take up the matter of loss of amenities, loss of expectation in life and disfigurement. PW 4 Dr. A.P. Singh deposed that the Appellant's right leg will never regain its proper shape cosmetically. The same had been disfigured because of the injuries and due to successive surgeries performed at regular intervals. He deposed that the Appellant would never be able to squat on the floor throughout life. A certificate dated 19.08.1994 (Ex. PW 4/1) was also issued by Dr. A.P. Singh to the effect that the Appellant has suffered permanent disability. The percentage of disability was not given. During the course of the Appeal a permanent disability certificate from Ram Manohar Lohia Hospital was filed which quantified the permanent disability to be 20%. Thus taking all the circumstances into consideration, a compensation of ₹60,000/- is awarded towards loss of amenities, disfigurement and loss of expectations in life.

LOSS OF EARNING CAPACITY:

22. In *Raj Kumar v. Ajay Kumar & Anr.*, 2011 (1) SCC 343, the Supreme Court brought out the difference between permanent disability and functional disability resulting in to loss of earning capacity. It was laid down that the compensation on account of loss of earning capacity has to be granted in accordance to the nature of the job undertaken by a victim of a motor accident. Paras 11 and 14 of the report are extracted hereunder:

“11. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this Court in *Arvind Kumar Mishra v. New India Assurance Co. Ltd.* 2010 (10) SCC 254 and *Yadava Kumar v. D.M., National Insurance Co. Ltd.* 2010 (10) SCC 341.

x x x x x x x

14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government

service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity.”

23. Thus the same disability may have a different impact on the earning capacity of an injured following a different vocation. In the instant case, the Appellant deposed that he was a professional working in the field of *Jali* work. He was earning ₹5000/- per month at the time of the accident and his income would have increased with his experience. As stated earlier PW 4 Dr. A.P. Singh deposed that he cannot squat on the floor. The Appellant's testimony that he was a craftsman in wood architecture was not challenged in cross-examination. As stated earlier, his income was estimated by the Claims Tribunal to be about ₹3000/- per month which in my view was quite liberal. I would take the Appellant's loss of earning capacity as per his disability i.e. 20% and award him a compensation of ₹1,15,200/- ($3000 \times 20\% \times 12 \times 16$). The overall compensation as against ₹4,50,000/- thus comes to ₹ 5,68,557/-.

24. Thus, the compensation is reassessed as under:

Sl. No.	Compensation under various heads	Awarded by this Court
1.	Medical Expenses	₹2,03,357/-
2.	Expenses for Purchase of Blood(21 units)	₹18,000/-
3.	Conveyance Expenses	₹ 20,000/-
4.	Special Diet	₹ 20,000/-
5.	Loss of Earnings	₹ 72,000/-
6.	Pain and Suffering	₹ 60,000/-
7.	Loss of Amenities	₹ 60,200/-
8.	Loss of Future Earning Capacity	₹ 1,15,200/-
	Total	₹ 5,68,557/-

25. I have already held above that the Appellant has also contributed to the negligence and the share of the contributory negligence was assessed by the Claims Tribunal to be 50% which seems to be quite reasonable.

26. Thus, the overall compensation is enhanced from ₹2,25,000/- to ₹2,84,278/-. The enhanced compensation of ₹59,278/- shall carry interest @ 9% per annum from the date of filing of the

Claims Petition up to the date of the award i.e. 27.10.2001 and @ 7.5% per annum from 28.10.2001 upto the date of payment.

27. Respondent No.2 DTC is directed to deposit the enhanced amount of compensation along with interest in the name of the Appellant in UCO Bank, Delhi High Court Branch within six weeks.

28. The Appeal is allowed in above terms.

(G.P. MITTAL)
JUDGE

MAY 17, 2012
pkv