

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

Reserved on: 7th November, 2012
Pronounced on: 22nd November, 2012

+ **MAC.APP. 550/2005**

DTC & ANR. Appellants

Through: Mr. J.N. Aggarwal, Adv.

versus

VEENA KAPOOR & ORS. 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 Delhi Transport Corporation (DTC) impugns a judgment dated 21.02.2005 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹4,10,100/- was awarded in favour of the First Respondent for having suffered injuries in a motor vehicle accident which occurred on 30.04.1996.
2. As per the case set up by the First Respondent, on 30.04.1996 she was travelling in a TSR No.DL-1RA-7004 from ISBT, Kashmere Gate to her house at Vikaspuri. At about 4:30 A.M. the autorickshaw reached near MIG flats, Rajouri Garden. A DTC bus No.DL-1P-9234 came from behind; overtook the autorickshaw and without giving any signal abruptly stopped the vehicle resulting in the TSR colliding against the rear of the bus. The First Respondent suffered multiple fractures in the right foot, patella right, clavicle and injuries on various parts of her body. She was

initially removed to DDU hospital where MLC Ex.PW-2/B was prepared. She then received treatment from Dr. N.C. Joshi Memorial Hospital. She suffered 15% disability in respect of the right lower limb on account of restriction of knee movement and slight limp in walking.

3. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of the driver of DTC bus and awarded a compensation of ₹4,10,100/- which is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Medical Expenses, Conveyance & Special Diet	₹30,000/-
2.	Permanent Disability	₹ 2,98,944/-
3.	Loss of Income	₹ 51,150/-
4.	Pain & Suffering, Loss of Amenities of Life, Mental Shock & Pain	₹ 30,000/-
	Total	₹ 4,10,094/-
	Rounded off	₹ 4,10,100/-

4. The following contentions are raised on behalf of the Appellants:-
 - (i) There was no negligence on the part of the driver of the DTC bus. The accident was caused on account of the sole negligence of TSR driver who collided with the rear of the bus. In any case, it was a case of composite negligence on the part of the drivers of the two vehicles involved in the accident.

- (ii) The compensation awarded is excessive and exorbitant. The First Respondent was working as a Teacher in *Kulachi Hansraj Model School*. Her income was not affected on account of the injuries suffered in the accident, rather the same increased in due course. The Claims Tribunal ought not to have awarded her any compensation on account of loss of earning capacity.

NEGLIGENCE

5. Elaborating his arguments, the learned counsel for the Appellants urges that FIR No.334/1996 was recorded on the basis of the First Respondent's statement recorded by the police. The First Respondent attributed the negligence only on the part of TSR driver. Her claim in the Petition that the accident was caused on account of rash and negligence of the DTC bus driver was an afterthought to claim compensation from the DTC.
6. It is pleaded that the driver of the DTC examined himself as RW-1 and deposed about the manner of the accident.
7. On the other hand, the TSR driver was not produced by the First Respondent. Thus, argues the learned counsel, the Claims Tribunal fell into error in returning the finding on negligence against the Appellant's driver.
8. In the Claim Petition it was categorically stated that the DTC bus No.DL-1P-9234 came from behind at a very fast speed and overtook the auto rickshaw. It was stated that the driver of the DTC bus suddenly applied the brakes after overtaking the TSR.
9. A joint written statement was filed by the Appellant and its driver Joginder Singh wherein it was stated that the TSR driver was solely negligent as he hit against a stationary DTC bus.

10. The First Respondent entered the witness box as PW-6 and testified to the version stated in the Claim Petition. In cross-examination, the First Respondent stuck to her guns that the accident took place as the DTC bus stopped abruptly after overtaking the TSR. No suggestion was given to PW-6 that the bus did not overtake the TSR.
11. Joginder Singh, driver of the DTC bus entered the witness box as RW-1. He stated that on 30.04.1996 he took out the bus from Mayapuri Depot at 4:30 A.M. for going to Najafgarh. At about 5:00 A.M. he reached Tatarpur bus stand. He stopped the bus on getting a signal from a staff member for boarding the bus. In the meanwhile, a TSR came from behind and hit against the bus. In cross-examination, the DTC bus driver deposed that within half a second on stopping the bus, it was hit by a TSR. Thus, the DTC bus driver's testimony corroborates the First Respondent's version at least to the extent that the DTC bus had stopped abruptly. It is clear from the driver's (RW-1's) testimony that a staff member of the DTC gave a signal, the driver stopped the bus and within half a second, the TSR collided against the bus.
12. It is noteworthy that this accident took place at 5:00 A.M. when the roads are comparatively clear. The TSR driver could not have possibly stopped the same on time even if this was being driven at a moderate speed, if all of a sudden a heavy vehicle stops in the middle of the road. Thus, negligence on the part of the bus driver was writ large. The finding reached by the Claims Tribunal cannot be faulted. Even if, it is assumed that there was composite negligence, the First Respondent was at liberty to seek compensation from either of the tortfeasors. (See: *T.O. Anthony v. Karvarnan & Ors.*, (2008) 3 SCC 748).

13. Thus, the DTC was rightly held liable to pay the compensation.

QUANTUM OF COMPENSATION

14. Section 168 of the Motor Vehicles Act, 1988 (the Act) enjoins just compensation. In *General Manager, Kerala Road Transport Corporation, Trivandrum v. Susamma Thomas & Ors.*, (1994) 2 SCC 176, the Supreme Court held as under: -

“5.....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'. All this means that the sum awarded must be fair and reasonable by accepted legal standards.”

15. It is urged by the learned counsel for the Appellants that the First Respondent is alleged to have suffered 15% disability in respect of her right lower limb on account of stiffness and slight limp. This disability did not affect the First Respondent's earning capacity. She was employed as a Teacher with Kulachi Hansraj Model School and was getting a salary of about ₹3500/- per month at the time of the accident. In the year 2004 when the statement of PW-5 (the employee of the school) was recorded he proved salary slip Ex.PW-5/5 to show that she was getting a salary of over ₹12,000/- per month. It is urged that the First Respondent did not suffer any functional disability resulting into loss of earning capacity.
16. In *Raj Kumar v. Ajay Kumar & Anr.*, 2011 (1) SCC 343, the Supreme Court brought out difference between permanent disability and functional disability resulting into loss of earning capacity. The Supreme Court observed that unless a person suffers functional disability, he would not

be entitled to any compensation. Paras 11 and 14 of the report are extracted hereunder:

“11. What requires to be assessed by the Tribunal is the effect of the permanent 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.

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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.”

17. Since the First Respondent did not suffer any functional disability, in view of the ratio of *Raj Kumar* she is not entitled to any compensation on account of loss of earning capacity.
18. It is urged by the learned counsel for the Appellants that the First Respondent after this accident met with another accident on 03.02.1997. It is not known whether the permanent disability was on account of the injuries suffered in that accident. As stated earlier, immediately after the accident the First Respondent was admitted to DDU hospital. She was found to have suffered comminuted fracture Patella right with fracture clavicle right and fracture shaft femur right apart from injuries on various parts of her body. She had not recovered from the injuries by the time the second accident took place after nine months. Thus, it is evident that the injuries suffered were severe and serious. The First Respondent remained admitted in the hospital from 03.04.1996 to 23.05.1996. She took physiotherapy from Dr. N.C. Joshi Memorial Hospital. She suffered second accident because she was unable to move on account of the injuries already suffered by her in the right leg/knee.
19. The First Respondent remained under treatment for about 1½ years. Initially, she remained admitted in DDU hospital for one month and 20 days. She continuously took physiotherapy from Dr. N.C. Joshi Memorial Hospital for a period of about one year. She needed an attendant during her admission in the hospital and thereafter to be taken to the hospital for physiotherapy.
20. The minimum wages of an unskilled worker in the year 1996 were ₹1677/- per month. Thus, I would award a compensation of ₹ 20,124/-

(1677/- x 12) towards Attendant charges for one year. I further award a sum of ₹20,000/- each towards special diet and conveyance.

21. It is difficult to measure in terms of money the pain and suffering which is suffered by the claimant on account of serious injuries caused to her 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 underwent by the victim of a motor accident. For this purpose, the Claims Tribunal and the Courts normally consider the nature of injury; the parts of the body where the injuries were sustained; surgeries (if any) underwent by the victim; confinement in the hospital and the duration of the treatment.
22. Considering the facts and circumstances of the case, period of hospitalization and surgery underwent, I award a sum of ₹40,000/- towards pain and suffering.
23. The First Respondent is further entitled to a sum of ₹40,000/- towards loss of amenities and expectations in life.
24. The compensation awarded is re-computed as under:-

Sl. No.	Compensation under various heads	Awarded by this Court
1.	Attendant Charges	₹ 20,124/-
2.	Special Diet	₹ 20,000/-
3.	Conveyance	₹ 20,000/-
4.	Pain and Suffering	₹ 40,000/-
5.	Loss of Amenities and Loss of Expectation in life.	₹ 40,000/-

6.	Medical Expenses (as awarded by the Claims Tribunal)	₹30,000/-
7.	Loss of Income (as awarded by the Claims Tribunal)	₹ 51,150/-
	Total	₹ 2,21,274/-

25. Thus the compensation stands reduced from ₹4,10,100/- to ₹2,21,274/- which shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.
26. By an order dated 11.07.2005, on deposit of the award amount along with interest, 50% thereof was ordered to be released in favour of the First Respondent. Rest of the compensation was ordered to be kept in fixed deposit with a nationalized bank. Thus, a principal sum of ₹2,05,050/- was released to the First Respondent. Remaining amount of ₹16,224/- along with proportionate interest shall be released in favour of Respondent No.1. Rest of the amount deposited along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.
27. The Appeal is allowed in above terms.
28. Statutory amount of ₹25,000/-, if any, shall be refunded to the Appellant.
29. Pending Applications stands disposed of.

(G.P. MITTAL)
JUDGE

NOVEMBER 22, 2012
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