

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

Date of decision: 14th December, 2012

+ **MAC.APP. 653/2012**

U.P. STATE ROAD TRANSPORT CORPORATION..... Appellant
Through: Ms. Garima Prashad, Adv.

versus

AMARJIT SINGH @ NEETU. Respondent
Through: Mr. S.K.Vashisth, Adv.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. This Appeal is directed against a judgment dated 16.02.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹9,90,700/- was awarded in favour of the Respondent for having suffered injuries in a motor vehicle accident which occurred on 24.08.2009 resulting in 50% disability in respect of his right leg.
2. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of bus No.UP-11T-2704 by its driver.
3. The Claims Tribunal awarded a compensation of ₹9,90,700/- which is tabulated hereunder:-

Sl.No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Loss of Future Earning Capacity	₹4,98,078/-

2.	Medical Bills	₹ 2,51,552/-
3.	Special Diet	₹ 7,000/-
4.	Conveyance	₹ 5,000/-
5.	Attendant Charges	₹ 9,000/-
6.	Pain and Suffering	₹ 70,000/-
7.	Loss of Amenities of Life	₹ 1,00,000/-
8.	Loss of Expectation of Life	₹ 50,000/-
	Total	₹ 9,90,630/-
	Rounded off	₹ 9,90,700/-

4. The following contentions are raised on behalf of the Appellant:-

- (1) There was no negligence on the part of Appellant's bus driver. The Claims Tribunal erred in holding that the Appellant's bus driver was negligent in driving the bus.
- (2) The compensation of ₹70,000/- awarded towards pain and suffering and non pecuniary damages is on the higher side.
- (3) The Claims Tribunal awarded a sum of ₹2,51,552/- whereas there was supporting documents only with regard to amount of ₹1,61,005/- only paid to Bhupal Nursing Home, Meerut. There were no supporting documents with regard to the rest of the amount.

NEGLIGENCE

5. It is urged by the learned counsel for the Appellant that the accident occurred while the Respondent (the Claimant) was trying to get into the moving bus. It is contended that admittedly there was no bus stop near

the place of the accident. Thus, the Claimant himself was to be blamed for sustaining the injuries.

6. The Claims Tribunal dealt with the issue of negligence in Paras 5 to 8 of the impugned judgment which are extracted hereunder:-

“5. Petitioner stated in his affidavit Ex.PW1/1, on 24/08/09 he came to Delhi from Meerut to buy some goods for selling in his shop. At about 10.15 am, when he was waiting at Dilshad Garden Metro Station, a U.P Roadways Bus bearing registration no. UP11T2704, which was going towards Shahdara from Upsara Border side, came and he gave a signal to the driver to stop the bus. While the petitioner was boarding the bus, the driver suddenly started the bus negligently and at a fast speed. Consequently the petitioner fell down and the tyre towards the conductor side of the bus ran over his leg. He also sustained injuries over other parts of his body. He was taken to GTB Hospital where his MLC No. B3915/ 09 was prepared. The testimony of the petitioner is uncontroverted and unchallenged.

6. SHO, P.S. Seemapuri filed proceedings U/s 158 (6) Motor Vehicle Act. The FIR bearing no. 292/09 has been annexed with the said report which reveals that the FIR was registered on the statement of the petitioner against respondent no. 1 for having driven the offending bus rashly and negligently and thereby causing injuries to the petitioner.

7. Respondent no. 1 stated in his affidavit Ex. RIW1/A that on the day of the accident he was plying his bus bearing no. UP11T2704 from Haridwar to Delhi. When he reached Seemapuri Border, the petitioner tried to board the moving bus without a bus stand. He ran towards the moving bus but failed to board the bus, he slipped and sustained injuries due to his own carelessness and negligence. In cross examination, respondent no. 1 stated that he did not file any complaint with any senior official that he was falsely implicated in the accident case. The respondents had not raised defence in their written statement that the petitioner had tried to board a moving bus nor this defence has been put to the petitioner in cross examination. Moreover, respondent no. 1 has

also not shown any reason for nonfiling of any complaint against his false implication, if any, in the accident case.

8. *On the other hand, the proceedings U/s 158 (6) M.V. Act reveal that respondent no. 1 has been named as an accused in the accident case for having caused the accident due to his rash and negligent driving of the bus bearing no. UP11T2704. Thus, from the oral as well as documentary evidence, adduced on record, petitioner has been able to prove that he sustained injuries in motor accident which occurred on 24/08/09 at Infront of Dilshad Garden, Metro Station, Near Apsara Border, Delhi within the jurisdiction of P.S. Seemapuri involving vehicle i.e UP. Roadways no. UP11T2704 being driven by respondent no. 1 in a rash and negligent manner.”*

7. The Respondent was specific that he gave a signal to the bus driver to stop the bus. The bus was stopped. When he was trying to board the bus, the driver suddenly started the bus. This part of the Respondent's testimony was not challenged in cross-examination. In fact, not even a single question was put to the Respondent in his cross-examination to dispute the manner of the accident.
8. Learned counsel for the Appellant relies on testimony of Pawan Kumar (R1W1), the driver of the offending bus who tried to build up a case that the Respondent tried to board the running bus. The bus driver was put to cross examination. He denied the suggestion that he allowed the passengers to board the bus and alights from the bus at UP border. He further admitted that he had not filed any complaint against registration of the criminal case against him to the senior police officers.
9. I have already stated above that the Respondent's testimony with regard to the manner of the accident was not challenged. The Appellant's bus driver was cross examined on the aspect that the Respondent tried to board the running bus. Thus, on weighing the evidence and on the

touchstone of preponderance of probabilities it can be said that the accident was caused because of rash and negligent driving of bus No.UP-11T-2704 by Pawan Kumar, the driver of the UPSRTC bus. The Claims Tribunal's finding on negligence cannot be faulted.

QUANTUM

10. It is urged by the learned counsel for the Appellant that the Claims Tribunal awarded compensation towards loss of future earning capacity on the basis of minimum wages of an unskilled worker. The Respondent was admittedly a resident of U.P. It is contended that the minimum wages of an unskilled worker at the relevant time in the State of U.P. were ₹3200/- per month should have been taken into account to award loss of future earning capacity. It is stated that the Claims Tribunal erred in making an addition of 50% towards future prospects. In the instant case, this could not have been done by the Claims Tribunal as the Respondent failed to adduce any evidence to prove that he had good future prospects.
11. I have before me the Trial Court record. In the Claim Petition, the Respondent averred that he was running a shop and had an income of ₹10,000/- per month. In his Affidavit Ex.PW-1/1 by way of evidence the averments made in the Claim Petition were corroborated. Although, no cogent evidence was produced by the Respondent with regard to his income, yet the fact that he was running a shop was not disputed by putting any question in cross-examination. At the same time, details of the shop or the business were not given. In the circumstances, it was not appropriate to grant compensation towards loss of future earning capacity on the basis of minimum wages of an unskilled worker. While assessing

the income of a shopkeeper in the year 2009, the Court could have assumed the income at least ₹5,000/- per month.

12. Admittedly, there was no evidence with regard to his good future prospects. Thus, addition of 50% could not have been made. On the other hand, an addition of 30% towards inflation should have been granted on the basis of judgment of the Supreme Court in *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559.
13. The loss of future earning capacity thus comes to ₹5,46,000/- (5000/- + 30% x 12 x 14 x 50%) instead of ₹4,98,078/- awarded by the Claims Tribunal.

PAIN AND SUFFERING AND NON PECUNIARY DAMAGES:-

14. Immediately after the accident, the Respondent was removed to GTB hospital, Shahdara. The relatives of the Respondent were not satisfied with the treatment. Therefore, they shifted the Respondent to Bhupal Nursing Home (a unit of Mayrashtra Medicare), Begum Bridge Road, Meerut. The Respondent remained admitted in this hospital initially from 24.08.2009 to 14.09.2009 where reconstruction of right leg and foot, reconstruction of left leg and foot and splintage of both legs and debridement of wound was done. The Respondent underwent two surgeries as mentioned in the bills placed on record. The Respondent was again admitted in this very hospital on 22.09.2009 and was discharged on 29.09.2009. He again underwent procedure. The Respondent suffered permanent disability to the extent of 50% in respect of his right lower limb on account of amputation of his right foot. His condition can be further seen from the photographs Ex.PW-1/E to PW-1/H proved before

the Trial Court. The award of compensation of ₹70,000/- towards pain and suffering cannot be said to be excessive and exorbitant. The same is just and reasonable.

15. The Claims Tribunal awarded a compensation of ₹1,00,000/- towards loss of amenities and ₹50,000/- towards loss of expectations of life. A compensation of ₹1,50,000/- is normally awarded in case of amputation of a leg. The Respondent has purchased prosthesis for his right foot. In the circumstances, a lump sum compensation of ₹1,00,000/- towards loss of amenities in life and expectations of life would be reasonable instead of ₹1,50,000/-.

MEDICAL EXPENSES

16. It is conceded by the learned counsel for the Appellant that bills for ₹1,61,000/- towards payment of Bhupal Nursing Home were proved. She states that expenditure with regard to rest of sum of ₹91,552/- was not established. There is a document Ex.PW-1/A proved on the Trial Court record which contains 42 items with regard to various expenditures. Item No.1 relates to an expenditure of ₹1,61,005/- paid to Bhupal Nursing Home. Rest of the bills ranging from ₹55/- to ₹30,300/- were duly proved.
17. The Claims Tribunal rightly granted a sum of ₹2,51,552/- towards expenditure on medical treatment.
18. The compensation awarded is recomputed as under:-

Sl.No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
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1.	Loss of Future Earning Capacity	₹4,98,078/-	₹5,46,000/-
2.	Medical Bills	₹ 2,51,552/-	₹ 2,51,552/-
3.	Special Diet	₹ 7,000/-	₹ 7,000/-
4.	Conveyance	₹ 5,000/-	₹ 5,000/-
5.	Attendant Charges	₹ 9,000/-	₹ 9,000/-
6.	Pain and Suffering	₹ 70,000/-	₹ 70,000/-
7.	Loss of Amenities in Life & Loss of Expectation of Life	₹ 1,50,000/- ₹ 50,000/-	₹ 1,00,000/-
	Total Rounded off	₹ 9,90,630/- ₹ 9,90,700/-	₹ 9,88,552/-

19. Thus, the award of compensation of ₹9,90,700/- cannot be said to be excessive and exorbitant. On the other hand, the overall compensation awarded by the Claims Tribunal is just and reasonable.
20. The Appeal is devoid of any merit; it is accordingly dismissed.
21. The compensation awarded in favour of the Respondent shall be released/held in fixed deposit in terms of the order passed by the Claims Tribunal.
22. The statutory deposit of ₹25,000/- be refunded to the Appellant.
23. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

DECEMBER 14, 2012

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