

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

Reserved on: 22nd March, 2012
Pronounced on: 11th April, 2012

+ **MAC. APP. No.497/2010**

BHURA Appellant
Through: Mr.O.P.Mannie, Advocate

versus

PURAN SINGH & ORS Respondents
Through: Mr. Kanwal Choudhary,
Advocate for the Respondent
No.3

+ **MAC. APP. No.524/2010**

NEW INDIA ASSURANCE CO LTD. Appellant
Through: Mr. Kanwal Choudhary,
Advocate.

versus

BHURA & ORS Respondents
Through: Mr.O.P.Mannie, Advocate

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

J U D G M E N T

G. P. MITTAL, J.

1. These two Cross Appeals arise out of a judgment dated 26.03.2010 whereby a compensation of ₹ 6,57,340/- was awarded to Bhura, the Appellant in MAC APP.497/2010 and

the First Respondent in MAC APP. 524/2010 for having suffered injuries in an accident which occurred on 03.02.2008. For the sake of convenience the Appellant in MAC APP.524/2010 shall be referred to as Appellant and the Appellant in MAC APP. 497/2010 shall be referred to as the Claimant.

2. While the Claimant was riding on the pillion seat of the two-wheeler, it was allegedly hit by a truck No. HR 37A-5763 from behind. It was claimed that the truck was being driven at a high speed in a rash and negligent manner. After the accident, the motorcycle was dragged for a considerable distance. The Claimant suffered grievous injuries on his right leg. He remained admitted in Sanjay Gandhi Memorial Hospital from 03.02.2008 to 11.02.2008. He was then admitted in AIIMS from 14.02.2008 to 28.02.2008 where an amputation of his right leg above knee was done. A disability certificate dated 18.02.2010 was issued declaring him physically disabled to the extent of 80%. It was stated that his condition was not likely to improve. The Claims Tribunal by the impugned judgment awarded the following compensation:-

<i>Compensation for pain & sufferings</i>	<i>₹20,000/-</i>
<i>Compensation for expenses incurred on Medical treatment</i>	<i>₹3,000/-</i>
<i>Compensation for special diet</i>	<i>₹2,000/-</i>
<i>Compensation for conveyance charges</i>	<i>₹2,000/-</i>

<i>Compensation for loss of income</i>	<i>₹7,300/-</i>
<i>Compensation for loss of earning capacity</i>	<i>₹4,73,040/-</i>
<i>Compensation on account of inconvenience hardship, discomfort, disappointment, frustration and mental stress in life.</i>	<i>₹75,000/-</i>
<i>Compensation for loss of enjoyment of amenities of life & general damages</i>	<i>₹75,000/-</i>
<i>Total</i>	<i>₹6,57,340/-</i>

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

- (i) There was contributory negligence on the part of the Claimant as three persons were riding on the two-wheeler as against the carrying capacity of two.
- (ii) The compensation awarded is exorbitant and excessive. Addition of 50% in the minimum wages was not permissible.

4. On the other hand, on behalf of the Claimant it is urged that the Claimant was a young unmarried boy of 22 years. He was working as a mechanic. Loss of earning capacity in his case was 100%. There was no reason to disbelieve the Claimant's testimony that he was working as a mechanic and earning ₹7000/- per month. The compensation awarded towards pain

and suffering, medical expenses, special diet, conveyance charges, loss of income and loss of earning capacity is on the lower side. The compensation awarded toward loss of amenities and inconvenience is inadequate.

Negligence:-

5. It is an admitted case of the parties that the Claimant was not driving the two-wheeler; thus even if some negligence (although none is proved) is assumed on the part of the driver of the two-wheeler, the Claimant was at liberty to sue any or either of the tortfeasors as it was a case of composite negligence and not contributory negligence (*T.O. Anthony v. Karvarnan & Ors.*, (2008) 3 SCC 748).
6. There is no presumption that there would be negligence on the part of two-wheeler driver if three persons are riding on a two-wheeler. The negligence has to be established as a fact. In this case, the Claimant filed his affidavit Ex.PW-1/A and entered the witness box as PW-1. He deposed that the truck No. HR 37A-5763 came from behind at a very high speed and it hit the motorcycle while it was being driven in a rash and negligent manner. Though a suggestion was given to the Claimant that the motorcycle was being driven in a rash and negligent manner yet the factum of the truck hitting the motorcycle from behind was not disputed. Moreover, the truck driver i.e. the Respondent No.1 did not enter the witness box to rebut the

claimant's testimony. In the circumstances, the Claims Tribunal was justified in reaching the conclusion that the accident was caused on account of the rash and negligent driving of the truck driver.

Quantum of Compensation

7. First of all, I would deal with the question as to the Claimant's income. The Claimant as PW-1 testified that at the time of the accident he was working as a motor mechanic and was earning ₹7000/- per month. The Claimant admitted in his cross-examination that he has no diploma as a motor mechanic. He stated that he had no proof of his income. It is important to note that the Claimant has not even given the details as to where he was working as a motor mechanic, i.e., the name of the employer and the name of the shop were also not given. The learned counsel for the Claimant relies on a Division Bench judgment of Allahabad High Court titled *National Insurance Company v. Anisha Begum IV (2007) ACC 97 (DB)*; in support of his contention that in the absence of any rebuttal the Claimant's testimony regarding his income ought to have been believed. As observed above, the Claimant did not even give the name of his employer and the place where he was employed. In the circumstances, the Claims Tribunal rightly disbelieved the Claimant's version that he was working as a motor mechanic.

8. As per the disability certificate there was a disability of 80%. It was not mentioned in the certificate if the disability was with respect to his right lower limb or with respect to the whole body. In case of an amputation of any limb, the disability is with respect to that limb. Amputation of one of the lower limbs substantially affects the earning capacity unless a person is doing a desk job. I have already upheld earlier the Claims Tribunal's finding that it was not proved that the Claimant was working as a motor mechanic. Even if it is assumed that he was working as a labourer he would hardly be able to carry out his job. There would hardly be any possibility to a labourer to get an alternative employment. In the circumstances, I would take the loss of his earning capacity as 80%.
9. In *Dhaneshwari & Another v. Tajeshwar Singh & Others*, MAC APP 997/2011 decided on 19.3.2012, after noticing the Judgments of this Court in *Smt. Anari Devi v. Shri Tilak Raj & Anr.*, II (2004) ACC 739; (2005 ACJ 1397), *National Insurance Co. Ltd. v. Pooja & Ors.*, II (2006) ACC 382 (2007 ACJ 1051), *Om Kumari & Ors. v. Shish Pal & Ors.*, 140 (2007) DLT 62, *Narinder Bishal & Anr. v. Rambir Singh & Ors.*, MAC APP. 1007-08/2006, decided on 20.02.2008, *New India Assurance Co. Ltd. v. Vijay Singh* MAC APP. 280/2008 decided on 09.05.2008; *Oriental Insurance Company Limited v. Smt. Rajni Devi & Ors.* MAC APP.286/2011 decided on 06.01.2012; *Smt. Gulabeeya Devi v. Mehboob Ali & Ors.* MAC APP.463/2011

decided on 10.01.2012 and IFFCO TOKIO Gen. Ins. Co. Ltd. v. Rooniya Devi & Ors. MAC APP.189/2011 decided on 30.01.2012 and Division Bench Judgments of this Court in Delhi Transport Corporation and Anr. v. Kumari Lalita 22 (1982) DLT 170 (DB) and Rattan Lal Mehta v. Rajinder Kapoor & Anr. II (1996) ACC 1 (DB), this Court has held that in view of Rattan Lal Mehta (supra) increase in minimum wages cannot be given on account of future inflation.

10. Thus, the loss of earning capacity to the extent of 80% would come to ₹ 6,30,720/- (3650/- x 12 x 18 x 80%).
11. *In Raj Kumar v. Ajay Kumar & Anr., 2011 (1) SCC 343*, in para 15 it was held that if the compensation is awarded by treating the loss of earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and only a token or nominal amount may be awarded under this head. The compensation of ₹20,000/- awarded for pain and suffering is on the lower side and the same is enhanced to ₹50,000/- considering the period of hospitalization and the time taken for recovery. The compensation awarded towards special diet and conveyance charges is very meager; the same needs to be raised. Some provision ought to have been made for award of compensation for disfigurement and loss of marriage prospects as the Claimant was a young boy of

22 years. Thus, I would award a compensation of ₹1,00,000/- under this head. The compensation is recomputed as under:-

<i>Loss of Earning Capacity</i>	₹6,30,720/-
<i>Pain and Suffering</i>	₹50,000/-
<i>Medical treatment</i>	₹3,000/-
<i>Special Diet</i>	₹5,000/-
<i>Conveyance Charges</i>	₹5,000/-
<i>Loss of Income (3 months)</i>	₹10,950/-
<i>Compensation on account of Disfigurement and Loss of Marriage Prospects</i>	₹1,00,000/-
<i>Compensation for Loss of Amenities in Life</i>	₹25,000/-
<i>Total</i>	₹8,29,670/-

12. The overall compensation is enhanced from ₹6,57,340/- to ₹8,29,670/-. The enhanced compensation of ₹1,72,330/- shall carry interest @ 9% per annum from the date of filing of the petition till the payment.
13. The Appellant/Insurance Company is directed to deposit the enhanced compensation along with interest within six weeks.
14. The compensation awarded by the Claims Tribunal shall be released/held in Fixed Deposit in the manner as directed by the Claims Tribunal. Out of the enhanced compensation 20% shall be released immediately to the Claimant. Rest of the 80%

shall be held in Fixed Deposit in the UCO Bank, Delhi High Court Branch, for a period of 10 years on which the Claimants shall be entitled to get quarterly interest.

15. The statutory amount shall be refunded to the Insurance Company.
16. Both the Appeals are disposed of in above terms.

(G.P. MITTAL)
JUDGE

APRIL 11, 2012
mr