

\$~

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

% *Judgment delivered on: 21st February, 2014*

+ **MAC.APP. 725/2006**

SUSHILA

..... Appellant

Represented by: Mr.Mahavir Sharma,
Ms.Vandana Anand and
Mr.Ashish Dhingra,
Advocates.

Versus

RAJESH BHATIA & ORS.

..... Respondents

Represented by: Mr.Ramesh Kumar and
Mr.Ajay Singh, Advocates
for Respondent No.3/
Insurance Company.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. It is noted that the cause title of the appeal wrongly shows ‘Sushila & Ors. Vs. Rajesh Bhatia & Ors.’, however, there is only one appellant/injured. Hence, the same be read as ‘Sushila Vs. Rajesh Bhatia & Ors.’.

2. The present appeal is filed against the impugned award dated 30.05.2006, whereby the learned Tribunal has granted compensation for a sum of Rs.2,58,355/- with interest at the rate of 6% *per annum* from the date of filing the claim petition till realization of the amount. However, the appellant is entitled for an amount of

Rs.1,29,178/- with interest as noted above, on the basis of contributory negligence.

3. Vide this appeal, the appellant is seeking enhancement of the compensation amount as noted above.

4. The Ld. Counsel appearing on behalf of the appellant submitted that the learend Tribunal has erred by recording its opinion that the accident had taken place due to the composite negligence of both the parties as it was incumbent upon the appellant also to be vigilant while crossing the road. Accordingly, held the appellant 50% liable for composite negligence.

5. Ld. Counsel submitted that the Ld. Tribunal believed and relied upon the testimony of respondent No. 1, Rajesh Bhatia, i.e., driver of the offending vehicle who stated that the appellant was in a hurry to cross the road and jumped from the railing and came in front of the offending vehicle.

6. During the pendency of the instant appeal, the appellant filed the copy of chargesheet, which was filed against the respondent No. 1 in FIR No.120/2003 registered at P.S. Desh Bandhu Gupta Road, along with site plan. On perusal of the said chargesheet and the site plan, it was nowhere indicated that there was railing near the place of the accident. Learned counsel submitted that just to save himself and in order to take the benefit, driver of the offending vehicle had stated against the appellant and the learned Tribunal relied upon accordingly.

7. Learned counsel submitted that the appellant specifically stated that on 06.05.2003 at about 8.30 a.m., she was going along with her

husband to a temple at Model Basti at Rani Jhansi Road. When she was crossing the road along with her husband, one Maruti 800 Car (offending vehicle) bearing registration No.HR 51 3006 came from the side of Filmistan, being driven at a very fast speed, hit the appellant due to which her both legs were fractured. Respondent No.1, Shri Rajesh Bhatia/driver of the offending vehicle was also stopped by her husband. Firstly, she was removed to Asim Hospital and after getting first aid, she was taken to Maharaja Agrasen Hospital, where she remained admitted till 10.05.2003.

8. Learned counsel further submitted that on the issue of crossing over the railing, the appellant did not cross-examine the respondent No.1 as there was no railing. However, the respondent No.1, i.e., driver of the offending vehicle had attempted to convince the learned Tribunal that the accident had taken place due to composite negligence of both the parties, in which he succeeded and accordingly, the learned Tribunal held both the parties liable for 50% for committing the accident.

9. Learned counsel for the appellant further argued that the appellant has one unsound mind daughter and due to the accident she remained on bed rest for more than ten months. Accordingly, she could not look after her daughter for the said period. Thus, she had to engage one maid, namely, Pushpa, who had been examined as PW3. In her testimony, she stated that she used to do the entire household work including personal care of the appellant and her daughter as well. She had to go at 10.00 am and come back at 6.00 pm. For the said work, she used to charge Rs.3,000/- per month from the appellant. The receipts Ex.PW3/1 to 3/2 have been proved by the said witness for the charges received from the

appellant. However, the learned Tribunal has granted only Rs.10,000/- as against Rs.30,000/- as claimed by the appellant for attendant charges.

10. Learned counsel further argued that the appellant was earning about Rs.6,000 - 7,000 per month by doing stitching, knitting and giving tuitions to children in the evening. She has proved her income by filing income tax return Ex.P-1. Due to the injuries received in the accident, appellant remained bed ridden for about ten months, however, she could not earn anything for about fifteen months. The learned Tribunal has granted only Rs.78,000/- for loss of twelve months income.

11. Learned counsel further submitted that the appellant had visited the hospital for her treatment almost 30 to 35 times and every time she had to spent Rs.100 to 150 per visit. However, the learned Tribunal had granted only Rs.5,000/- for conveyance charges.

12. Learned counsel submitted that the appellant, who remained at home for about fifteen months and was taking treatment for the said period had spent a good amount on special diet. However, the learned Tribunal has granted only Rs.10,000/- for special diet.

13. Learned counsel further submitted that towards loss of amenities and expectation of life, the learned Tribunal has granted only Rs.10,000/- , which is on a very lower side. Though the appellant could not move from the bed for ten months and practically for a period of fifteen months from her house, accordingly amenities of life during that period was lost, but the learned Tribunal has only granted Rs.10,000/- for the same which is on a very lower side.

14. Learned counsel also submitted that appellant paid Rs.30,000/- to Shri Pramod Prasad, Physiotherapist, who appeared as PW2 and deposed that he used to charge Rs.3,000/- per month from the appellant. Receipts of the payment have been proved as Ex.PW2/1 to 2/10. But the learned Tribunal has awarded only Rs.10,000/- towards physiotherapy charges against Rs.30,000/- as claimed by the appellant.

15. Lastly but not the least, learned counsel for the appellant has argued that the accident had taken place on 06.05.2003 and the rate of interest, i.e., 6% *per annum* awarded by learned Tribunal is on lower side and submitted that at least interest at the rate of 12% *per annum* ought to have been granted by the learned Tribunal.

16. On the other hand, learned counsel appearing on behalf of the respondent No.3/Insurance Company submitted that DW1, the driver of the offending vehicle has specifically stated that the appellant herself came in front of his car by jumping the grill, therefore, he was not at fault in the accident in question. His testimony has not been rebutted by the appellant as there was no cross-examination on this issue.

17. Learned counsel further submitted that neither PW2 Shri Pramod Prasad was a Physiotherapist nor there was any advice from any doctor that the appellant required physiotherapy for ten months. Thus, testimony of PW2 did not conspire any evidence. However, the learned Tribunal has rightly granted Rs.10,000/- towards the same.

18. Learned counsel further submitted that the appellant claimed Rs.30,000/- towards the amount paid to the maid, but the learned Tribunal had granted Rs.10,000/-. For loss of income for about 12

months, the learned Tribunal has sufficiently granted Rs.78,000/-. Accordingly, on this issue also, no interference is required from this Court.

19. On the issue of conveyance charges, learned counsel submitted that the appellant herself has admitted in her evidence by way of affidavit that she visited for about 30 to 35 times and spent Rs.100 to 150 per visit as conveyance charges. He submitted that the learned Tribunal has sufficiently granted Rs.5,000/- towards the same, therefore, this issue also needs no interference from this Court.

20. Learned counsel further submitted that qua the special diet, loss of amenities and expectation of life and pain and suffering, the learned Tribunal had sufficiently granted Rs.10,000/- each for the first two heads and Rs.25,000/- for the latter.

21. As far as the issue of interest is concerned, in the year 2003, even the interest being paid on FDRs was from 6% to 6.5% and moreover, it is the discretion of the court. However, the learned Tribunal keeping in mind the interest rate prevalent at that time has awarded interest at the rate of 6% *per annum* on the awarded amount, from the date of filing of the Claim Petition till realization of the amount.

22. I have heard the learned counsel for the parties and perused the record.

23. Respondent no. 1, Rajesh Bhatia, i.e., the driver of the offending vehicle stated before the Ld. Tribunal that the appellant was in hurry in crossing the road and jumped from central verge of the grill and came in front of the offending vehicle, thus, he was not negligent for committing

the accident. Thus, Ld. Tribunal while relying upon the statement of respondent no. 1 held both the parties 50% liable to composite negligence. However, during the pendency of the instant appeal, the appellant filed a copy of the chargesheet against respondent no. 1 in FIR No. 120/2003, registered at PS-Desh Bandhu Gupta Road, along with site plan. Perusal of the said charge sheet and site plan reveal that it was nowhere indicated that there was a railing near the place of accident. The appellant has also deposed that on 06.05.2003, she was going along with her husband to a temple at Model Basti, Rani Jhansi Road, Delhi and when she was crossing the road along with her husband, one Maruti Car (offending vehicle) bearing registration No. HR-51-3006 came from the site of Filmistan, being driven at a very fast speed hit the appellant, due to which, both of her legs were fractured.

24. In her cross-examination, she denied the suggestion put by the counsel for the respondents that she was crossing the road after passing through the railings. Respondents also failed to produce any photographs or witness, which can prove that there was a railing near the spot of the accident. Therefore, Ld. Tribunal has overlooked this fact and held that both the parties were liable for 50% composite negligence.

25. In view of above discussion, I am of the considered opinion that appellant was not at all liable for the accident.

26. On the issue of attendant charges, the appellant remained on bed rest for more than 10 months. While admitting this fact, the Ld. Tribunal has awarded Rs.78,000/- towards loss of income for 12 months. However, the appellant examined PW3, Pushpa, who used to work at her residence and was taking care of the appellant and her mentally

challenged daughter and used to receive Rs.3,000/-, which has been proved vide receipts Ex.PW3/1 to PW3/2.

27. Keeping in view the testimony of PW3 and receipts Ex.PW3/1 and PW3/2, I am of the considered opinion that appellant is entitled for Rs.30,000/- towards attendant charges.

28. On the issue of loss of income, conveyance charges, towards loss of amenities and expectation of life and physiotherapy charges, I am of the considered opinion that Ld. Tribunal has rightly granted Rs.78,000/-, Rs.5,000/-, Rs.10,000/- and Rs.10,000/- respectively.

29. So far as the issue of rate of interest is concerned, appellant failed to examine any witness to prove that on the date of accident, i.e. 06.05.2003 rate of interest on FDRs was 12% or so as claimed by the appellant. Therefore, I am not inclined to interfere with the interest awarded by the Ld. Tribunal.

30. Accordingly, the compensation amount comes as under:-

Sl. No.	Heads of compensation	Compensation granted by the Ld. Tribunal.	Compensation granted by this court.
i.	Loss of income	Rs.78,000/-	Rs.78,000/-
ii.	Expenses for Medicines and treatment	Rs.1,10,355/-	Rs.1,10,355/-
iii.	Conveyance and diet charges	Rs.15,000/-	Rs.15,000/-
iv.	Compensation for pain and suffering	Rs.25,000/-	Rs.25,000/-

v.	Expenses on physiotherapy	Rs.10,000/-	Rs.10,000/-
v.	Expenses on domestic help	Rs.10,000/-	Rs.30,000/-
vi.	Loss of amenities and expectation of life	Rs.10,000/-	Rs.10,000/-
	Total	Rs.2,58,355/-	Rs.2,78,355/-

Resultantly, the award is assessed at Rs. 2,78,355/-

31. In view of the finding regarding the issue of negligence, the appellant / claimant is entitled for an amount of Rs.2,78,355/- along with 6% interest *per annum* from the date of filing of the petition till realization.

32. Respondent No.3/Insurance Company is directed to deposit balance compensation amount with the Registrar General of this Court within a period of six weeks from today, failing which, appellant / claimant shall be entitled for penal interest @ 9% *per annum* on account of delayed payment.

33. On deposit, the Registrar General is directed to release the amount in favour of the appellant / claimant on taking necessary steps by her.

34. In view of the above, the appeal is allowed.

SURESH KAIT, J.

FEBRUARY 21, 2014/sb/jg