

\$~3

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

% *Judgment delivered on: 16th May, 2014*

+ **MAC.APP. No.511/2013**

KASIM @ PAPPU

..... Appellant

Represented by: Mr. O.P. Mannie, Adv.

Versus

KUNWAR NATH & ORS.

..... Respondents

Represented by: Mr. K.L. Nandwani, Adv.
for R3.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. The present appeal has been preferred against the impugned award dated 20.02.2013, whereby, Ld. Tribunal has awarded compensation for an amount of Rs.1,98,679/- with interest @ 7.5% *per annum* from the date of filing of the Claim Petition till realization of the amount.

2. Vide the present appeal, the appellant is seeking enhancement of the compensation amount as noted above.

3. Mr. O.P. Mannie, Ld. Counsel appearing on behalf of the appellant submits that the appellant received injuries in an accident took place on 25.08.2008. He was 20 years of age on the date of accident and was working as a motor mechanic at a shop and stated to be earning Rs.5,000/-

per month. Since, he has failed to prove his avocation and salary, Ld. Tribunal has assessed his monthly income as Rs.3,683/- as per the Minimum Wages Act, 1948 applicable to unskilled worker prevalent at that time.

4. Mr. Mannie, further submits that in view of the facts noted above, Ld. Tribunal ought to have added 50% in his actual income towards future prospects, however, has erred in adding 30% to the same.

5. To strengthen his arguments, Ld. Counsel has relied upon a case of ***Rajesh and Ors. Vs. Rajbir Singh and Ors. 2013 (6) SCALE 563*** decided by the Full Bench of the Apex Court, whereby held as under:

*“11. Since, the Court in **Santosh Devi's case** (supra) actually intended to follow the principle in the case of salaried persons as laid in **Sarla Verma's case** (supra) and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.”*

*12. In **Sarla Verma's case** (supra), it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between*

the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter.

6. Mr. Mannie further submits that it is established that the accident had taken place due to the negligence of the driver of the offending vehicle and a criminal case was also registered against him. Despite, the Ld. Tribunal held the appellant liable for 20% of contributory negligence only for the reason that he was not holding valid licence on the date of the accident. He submits that the liability cannot be fastened upon the appellant on the basis of the above said reason.

7. To strengthen his arguments, Ld. Counsel has relied upon a case of ***Meera Devi and Anr. Vs. Himachal Road Transport Corporation 2014 ACJ 1012*** decided by the Full Bench of the Apex Court, wherein held as under:

“10. To prove the contributory negligence, there must be cogent evidence. In the instant case, there is no specific evidence to prove that the accident has taken place due to rash and negligent driving of the deceased scooterist. In the absence of any cogent evidence to prove the plea of contributory negligence, the said doctrine of common law cannot be applied in the present case. We are, thus, of the view that the reasoning given by the High Court has no basis and the compensation awarded by the Tribunal was just and reasonable in the facts and circumstances of the case.”

8. Mr. Mannie further submits that even in a case wherein a person was not holding a valid driving licence, the Apex Court has held that for this reason, he cannot be held liable until and unless the cause of accident is established.

9. The third ground argued by the Ld. Counsel for the appellant is that appellant was 20 years of age on the date of the accident. He was working as a motor mechanic at a shop and was earning Rs.5,000/- per month. He received 17% permanent disability. Despite, the Ld. Tribunal has not awarded compensation towards loss of amenities of life, Loss of expectation of life and also not granted any amount towards loss of marriage prospects.

10. On the other hand, Mr. K.L. Nandwani, Id. Counsel appearing on behalf of respondent / Insurance Company submits that appellant failed to prove his avocation and salary. Therefore, keeping in view the dictum of ***Sarla Verma Vs. DTC and Ors. 2009 (6) SCC 121***, which has been further affirmed by the Full Bench of the Apex Court in the case of ***Reshma Kumari and Ors. Vs. Madan Mohan & Anr. (2013) 9 SCC 65***, Ld. Tribunal has rightly added 30% in his actual towards future prospects.

11. On the issue of liability, Mr. Nandwani submits that Ld. Tribunal has recorded in its impugned award that the appellant was not holding valid driving licence, which establishes that he was not having driving experience. Thus, the Ld. Tribunal has rightly held him liable for 20% contributory negligence.

12. Mr. Nandwani further submits that the appellant has received 17% of the disability. However, keeping in view the dictum of ***Raj Kumar v. Ajay Kumar and Anr. (2011)1SCC343***, Ld. Tribunal has rightly assessed the same as 10%.

13. On the issue of non-pecuniary damages, Mr. Nandwani submits that keeping in view the facts and circumstances of the case and the injuries

received by the appellant, ld. Tribunal has adequately granted the compensation on these heads.

14. I heard ld. Counsels for the parties.

15. The issue of future prospects has been dealt by this court in the case bearing MACA No.846/2011 titled as ***ICICI Lombard General Insurance Co. Ltd. Vs. Angrej Singh & Ors.***, decided on 30.09.2013 while relying upon the dictum of ***Rajesh & Ors. (Supra)***.

16. Thus, keeping in view the age of the appellant as 20 years on the date of accident, I add 50% in his actual income towards future prospects.

17. As the issue of liability is concerned, it is pertinent to note that Ld. Tribunal has held that the appellant was not having valid driving licence on the date of the accident and has held that the Insurance Company is liable for 80% of the contributory negligence whereas the appellant has been held liable for 20% for the same.

18. In case of ***Meera Devi (Supra)***, the Apex Court has held that if the accident had taken place due to rash and negligent driving of the injured, he shall be held liable for contributory negligence. However, in the present case, cause of the accident is not due to the rash and negligent driving by the appellant, however, it is established that the driver of the offending vehicle was negligent. Therefore, I am of the considered opinion that the Ld. Tribunal has wrongly held the appellant was liable 20% for committing the accident.

19. Admittedly, the appellant received 17% disability in relation to left upper and lower limb due to the accident took place on 25.08.2008. However, while calculating the compensation, Ld. Tribunal has assessed 10% disability. He was working as a motor mechanic. In such a situation, a person who is a motor mechanic certainly would not be able to perform his work satisfactorily. The 17% disability would affect in his performance throughout his life. Therefore, I am of the considered opinion that Ld. Tribunal has wrongly assessed 10% disability. Hence, keeping in view the facts noted above, I assess his disability as 17%.

20. As the issue of compensation towards non-pecuniary damages are concerned, Dr. Harish Mansukhani, Chief Medical Officer of LBS Hospital, appeared as PW3 before the Ld. Tribunal and produced a report, wherein it is stated that the appellant received permanent disability of 17% with regard to the left upper and lower limb. The disability certificate is proved as Ex.PW3/1. PW3 identified the signatures of other Doctors of Medical Board at Point B, C and D. It is pertinent to note that the said disability certificate was issued after going through the treatment records from GTB Hospital as furnished by the appellant

21. Therefore, keeping in view the facts of the case and the injuries received by the appellant, I grant Rs.10,000/- each towards loss of amenities of Life and Loss of expectation of life and Rs.25,000/- for loss of marriage prospects.

22. Consequently, the compensation amount comes as under:-

Sr. No.	Heads	Calculation as per MACT	Calculation as per this Court
i.	For medicines and treatment	Rs.29,410/-	Rs.29,410/-
ii.	Conveyance and diet charges	Rs.20,000/-	Rs.20,000/-
iii.	Loss of income on account of leaves	Rs.10,849/-	Rs.10,849/-
iv.	Loss of income on account of disability	Rs.1,03,420/-	Rs.2,02,860/-
v.	Attendant charges	Rs.10,000/-	Rs.10,000/-
vi.	Compensation for pain and sufferings	Rs.25,000/-	Rs.25,000/-
vi.	Loss of amenities of life	Nil	Rs.10,000/-
vii.	Loss of expectation of life	Nil	Rs.10,000/-
viii.	Loss of marriage prospects	Nil	Rs.25,000/-
	Total	Rs.1,98,679/-	Rs.3,43,119/-

Resultantly, the compensation is assessed at Rs.3,43,119/-.

23. The contributory negligence has been assessed by the Ld. Tribunal at 20% of the award amount, i.e., Rs.39,735.8/- (rounded off to Rs.39,736/-). Therefore, the award amount has been assessed at Rs.1,58,943/- by the Ld. Tribunal.

24. Accordingly, an amount of Rs. 1,84,176/- is enhanced (Rs.3,43,119 – Rs.1,58,943).

25. The enhanced amount shall carry interest @ 7.5% *per annum* from the date of filing of the claim petition till realization.

26. The respondent No.3/Insurance Company is directed to deposit the enhanced compensation amount with the Registrar General of this Court within a period of six weeks from today, failing which, appellant shall be entitled for penal interest @ 12% *per annum* on account of delayed payment.

27. On deposit, the Registrar General is directed to release 50% of the enhanced amount with proportionate interest in favour of the appellant and the balance 50% shall be kept in FDR for a period of 3 years.

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

SURESH KAIT, J

MAY 16, 2014

jg