

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

% *Judgment delivered on: 17th January, 2014*

+ **MAC.A.487/2006 & CM No. 7800/2006**

DTC AND ANR. Appellants
Represented by: Mr. J.N. Aggarwal,
Advocate.

Versus

JAI CHAND Respondent
Represented by: None.

AND

MAC.A.205/2009 & CM No. 5833/2009

DTC AND ANR. Appellants
Represented by: Mr. J.N. Aggarwal,
Advocate.

Versus

TARA CHAND Respondent
Represented by: None.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the aforementioned appeal bearing MAC. APP. No. 487/2006, the appellant/Corporation has assailed the impugned award dated

05.04.2006, whereby the learned Tribunal has granted compensation for a sum of Rs.15,27,000/- with interest at the rate of 6% *per annum* from the date of filing the claim petition till realization of the amount.

2. Vide appeal bearing MAC. APP. No.205/2009, the appellant/Corporation has assailed the impugned award dated 27.07.2008, whereby the learned Tribunal has granted compensation for a sum of Rs.16,000/- with interest at the rate of 7.5% *per annum* from the date of filing the claim petition till realization of the amount.

3. Since both these appeals have arisen from the same accident occurred on 01.10.1996 and the relief sought by the appellant/Corporation in these appeals is same, therefore, the same are being decided by this Court by a common judgment.

4. First, this court will take the appeal bearing MAC. APP. No. 205/2009.

5. In view of the fact that the compensation granted in this appeal is just Rs.16,000/-, learned counsel appearing on behalf of the appellant/Corporation has fairly conceded that he did not dispute the quantum of compensation granted in favour of the respondent No.1/injured.

6. Therefore, keeping in view the statement made by learned counsel for the appellant/Corporation, the present appeal is dismissed being not pressed, without prejudice to the legal issue involved in MAC.APP. No. 487/2006.

7. Statutory amount be released in favour of the appellant.

8. Remaining compensation amount, if any, with interest be released in favour of the claimant.

CM No. 5833/2009 (for stay) in MAC. APP. No. 205/2009

With the dismissal of the appeal itself, this application has become *infructuous*. The same is accordingly dismissed.

MAC.A.487/2006

1. Brief facts of the case are that on 01.10.1996 at about 7.00 pm, the respondent/injured, who was employed as Head Constable (driver) in Delhi Police was on duty on Ambulance Van No.DBP-8261 and was returning alongwith other police officials after their duty from IGI Airport to Dhaula Khua via Gurgaon Road at a very slow speed on the correct side of the road and when the Ambulance, being driven by the respondent, reached opposite gate of R.R. Hospital at Gurgaon Road next to Subroto Park red light, all of a sudden, appellant No.2 had reversed the DTC Recovery Van bearing No.DL-1G-4116 without any indication, due to which dashed against the Ambulance Van. The impact was so powerful that entire front portion of the Van was badly damaged. The respondent was sandwiched, who was later on taken out by cutting the body of the said vehicle. He had suffered multiple injuries including multiple fractures in both the legs. Resultantly, his right leg was amputated and he was discharged from the service.

2. Mr. J.N. Aggarwal, learned counsel appearing on behalf of the appellant/Corporation has submitted that on 01.10.1996, Sh. Anil Kumar, appellant No.2 was performing his duty on Recovery Van Tango No.65, DL-1G-4116. At about 19.00 hours, as the appellant No. 1 was

attending the breakdown of Bus No.DBP-9231, the said Van was stationary at Subroto Park with all indicators. The respondent came in an Ambulance Van and hit the stationary Recovery Van.

3. Ld. Counsel submitted that the learned Tribunal had passed the impugned award dated 05.04.2006 without appreciating the evidence put by appellant No.2, i.e., driver of the offending vehicle, which was stationary and was hit by the respondent from behind. Thus, there was no negligence on the part of appellant No. 2.

4. He further submitted that the learned Tribunal had appreciated the statements of the persons, who were interested witnesses produced by the respondent/claimant, however discarded the statement advanced by appellant No.2.

5. Appellant No.2, appeared as R1 deposed before the learned Tribunal that DTC bus bearing No.DBP-9231 went out of order and Recovery Van bearing No.DL-1G-4116 came there to attend the said breakdown bus. He stopped the offending vehicle behind the DTC bus. At that time, Recovery Van was hit by an Ambulance Van bearing No.DBP-8261, which was being driven rashly and negligently by the respondent/claimant. As a result, the Recovery Van was pushed ahead and hit the DTC bus, thus, he was not negligent.

6. Learned counsel further argued that as per the disability certificate, the disability suffered by the respondent was assessed as 60% permanent disability qua right lower limb, however, while granting compensation, the learned Tribunal had considered the functional disability as 100%. He submitted that the functional disability suffered

by the injured was to be assessed as 30% in view of the direction of the Supreme Court in the case of *Raj Kumar Vs. Ajay Kumar and Anr. (2011) 1 SCC 343*, or at the maximum 50% but not more than that.

7. On perusal of record, it is established that respondent/claimant had examined PW1, HC Tara Chand, who testified that on 01.10.1996 at about 7.00 pm, he was on duty on Ambulance Van bearing No.DBP-8261, which was driven by the respondent. They were returning from Rao Tula Ram Crossing to Dhaula Kuan, Police Station and when they reached near Subroto Park, red light, opposite R.R. Hospital on Gurgaon Road, a DTC Recovery Van bearing No.DL-1G-4116 was in a stationary position near the divider of the road. All of a sudden, driver of the Recovery Van started driving the Van in the reverse gear, rashly and negligently without taking proper precautions and dashed against their vehicle. Due to which, their vehicle was badly damaged and they were not in a position to get out of the same. A message was flashed and thereafter they were taken out of the vehicle by cutting the iron gate of the said vehicle.

8. In cross-examination, nothing suggested to this witness that the accident was caused due to the negligence of the respondent who hit the stationary van. Also not made suggestion that at the time of accident, driver of the Recovery Van was sitting on the road and the Ambulance Van driven by the respondent had hit the stationary Recovery Van. In fact, his statement regarding negligence remained unchallenged.

9. Statement of the respondent/injured was fully corroborated by PW2, SI Kamleshwar Sharma. No suggestion was put to him in the cross-examination to the effect that the accident was caused due to the

negligence of the respondent. Fact remains, FIR No. 465/96 was lodged against appellant No.2, i.e., driver of the Recovery Van at P.S. Delhi Cantt and copy of chargesheet is Ex.PW3/2 to 3/6 against him.

10. The facts and evidence discussed above, established that the respondent/claimant was not at fault whereas driver of the Recovery Van, i.e., appellant No.2 was negligent while reversing the vehicle without taking due care.

11. As regards the issue of disability considered by the Tribunal, undisputedly, due to the said accident, right leg above knee of the respondent was amputated. He got fractures on Y5 Femur, fracture on left leg, wounds and abrasions on all over body and wounds in chest. He remained outdoor patient for more than one year. Due to disability, the respondent had lost the scope of promotion; otherwise he would have been promoted and reached to the rank of Inspector. However, he was discharged from the service as become unfit for service due to disability.

12. Respondent appeared as PW3 and categorically stated that after his retirement from service he had a plan to run transport business, but all his plans have shattered due to the accident. This accident had ruined his life and career.

13. PW6, ASI Virender Kumar had proved the copy of order of invalid out of service dated 27.02.2003 as Ex.PW6/1.

14. While assessing the functional disability, the Tribunals and the Courts have to see the avocation of the injured at the time of the accident. If a person is not able to continue with the same avocation due to the injuries, then the Courts should consider the functional disability

as 100%, otherwise depending on the facts and circumstances of each case.

15. In the case of **Raj Kumar (Supra)** the Apex Court has formulated the parameters for assessing the functional disability. It is relevant to note the illustration that has been referred in the above noted case, wherein in Para 10 it is held as under:

*“Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. **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. It may be noted that when compensation is awarded by treating the loss of future 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 as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may."

16. This court in a case of ***National Insurance Co. Ltd. Vs. Hari Om Mittal & Ors.***, reported in ***MANU/DE/2271/2013***, also upheld the functional disability of 100%, assessed by the learned Tribunal in the case of an injured driver. If the Tribunal has rightly considered the earning capacity and functional disability of an injured person, the Appellate Court need not interfere with the assessment.

17. In the present case, admittedly, the respondent/injured was working as a Head Constable (Driver) with Delhi Police. At the time of the accident, his age was 31 years. Keeping in view the age of the respondent, he would have reached upto the level of Inspector. But he was discharged from the service due to the disability occurred.

Undisputedly, due to the injuries received in the accident in question, his right lower limb was amputated as a result of which he became totally disabled to continue as a driver. Moreover, he was discharged from the service. He had a plan in mind to start a transport business after his retirement but due to the accident caused and due to the disability received therein, his plans have been shattered.

18. Keeping all facts and circumstances into view, i.e., his young age, his avocation, his discharge from the service, I am of the considered opinion that while granting compensation, the learned Tribunal has rightly assessed the functional disability suffered by the respondent as 100%.

19. In view of the above discussion, I do not find any merit in the instant appeal. Therefore, the same is dismissed.

20. Consequently, the statutory amount shall be released in favour of the appellant/ Corporation.

21. The compensation amount along with upto date interest accrued thereon shall be released in favour of the respondent/claimant on taking necessary steps by him.

CM No. 7800/2006 (for stay)

With the dismissal of the appeal itself, this application has become *infructuous*. The same is accordingly dismissed.

SURESH KAIT, J.

JANUARY 17, 2014

sb/jg