

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

Pronounced on: 19th February, 2015

+ **MAC.APP. 371/2007**

ASHOK AGGARWAL

..... Appellant
Through: Mr.Nitinjya Chaudhary,
Advocate with Mr. Atreya
Singh, Advocate

versus

SUSHIL KUMAR & ORS. Respondents
Through: Mr. J.N. Aggarwal, Advocate
for Respondent no.3.

+ **MAC.APP. 233/2007**

DELHI TRANSPORT CORPORATION

..... Appellants
Through: Mr. J.N. Aggarwal, Advocate

versus

ASHOK AGGARWAL

..... Respondent
Through: Mr.Nitinjya Chaudhary,
Advocate with Mr. Atreya
Singh, Advocates

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

J U D G M E N T

1. These two appeals arise out of judgment dated 01.12.2006 passed by the Motor Accident Claims Tribunal (the Claims

Tribunal) whereby compensation of Rs.4,98,148/- was awarded in favour of Ashok Aggarwal (Appellant in MAC. APP. 371/2007) and Delhi Transport Corporation(DTC) (Appellant in MAC.APP.233/2007) was made liable to pay the compensation along with interest @ 9% per annum from the date of filing of the claim petition.

2. MAC.APP.233/2007 is filed by the DTC on the ground that it is not liable to pay the compensation and, in the alternative, that the compensation awarded is exorbitant and excessive. MAC.APP.371/2007 is for enhancement of compensation on the ground that the compensation has not been computed in accordance with the law. It is the case of the Claimant that left arm of the Appellant has become non-functional and is of no use. The Claims Tribunal ought to have assumed the loss of earning capacity to be 90%. The award of compensation towards general damages is also stated to be on the lower side.
3. For the sake of convenience, the Appellant Ashok Aggarwal in MAC.APP.233/2007 shall be referred to as Claimant and the Appellant in the Cross-Appeal MAC.APP.371/2007 shall be

referred to as DTC. It may be mentioned that Respondents Sushil Kumar and Narender Singh, driver and owner of the bus involved in the accident, had not contested the proceedings. They preferred to be proceeded *ex parte*. They even did not contest the proceedings before the Claims Tribunal.

4. According to the case set up by the Claimant on 23.05.1990, he was driving his two-wheeler scooter no.DNE-4463. He was proceeding from Vasant Vihar to R.K. Puram while Kamal was sitting on the pillion seat. The offending bus on route no.511 (being driven by its driver in a rash and negligent manner) came from opposite direction. It abruptly took a right turn while being driven at a high speed. The claimant applied breaks and swerved the scooter to its right, despite that the front left side of the bus struck against the scooter. The claimant suffered post traumatic deformity and fracture of left hand fingers. He was found to have suffered 40% permanent disability in respect of his left hand. On appreciation of evidence, the Claims Tribunal opined that the accident was caused by rash and negligent driving of bus no.DEP-6651 being driven by its driver,

Respondent no.1 before the Claims Tribunal and awarded the compensation of Rs.4,98,148/-, which is tabulated hereunder:

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Loss of Earning	Rs.17,380 /-
2.	Medical Expenses	Rs. 1,56,000/-
3.	Conveyance	Rs.10,000/-
4.	Special Diet	Rs.10,000/-
5.	Pain, Suffering and Mental Agony	Rs.50,000/-
6.	Loss of Future Life Amenities and Pleasure	Rs.50,000/-
7.	Loss on account of Permanent Disability	Rs.2,04,768/-
	Total	Rs.4,98,148/-

5. It is urged by Mr. J.N. Aggarwal, the learned counsel for the DTC that although the claimant was aware since the very beginning that the bus was being run under DTC control, yet DTC was impleaded as a party only in the year 2001. As per the information available with the DTC, there was no agreement between the owner of the offending bus and the DTC. No such

agreement could be available as all the agreements after such a long time are destroyed. However, a format of the agreement was placed on record which absolved the DTC of its liability. Thus, Mr. J.N. Aggarwal, the learned counsel for the DTC points out that the Claims Tribunal acted illegally in fastening liability on DTC. It is urged that the compensation of Rs.2,04,768/- awarded towards permanent disability was not admissible as the Claims Tribunal ought to have held that there was no functional disability affecting claimant's earning capacity as the claimant was dismissed from service not on account of the injury but because of his continued long absence as he wanted to earn better in his business. The learned counsel urges that even if there was liability of the Insurance Company to pay compensation initially, it was entitled to recover the compensation paid from the owner of the bus. All the more, no interest could have been awarded prior to the date of impleading DTC in the claim petition.

6. The main ground of challenge raised by the claimant is that claimant's future prospects were not taken into consideration.

The permanent disability in left hand was such that he cannot carry out any work and his disability ought to have been taken as 100%. It is further urged that the compensation towards mental agony suffered by the claimant was not awarded. The compensation awarded towards the conveyance and loss of amenities was on the lower side.

7. The finding on negligence is not seriously disputed at the time of hearing of the appeal. PW1, the Claimant had testified that the driver of the bus DEP-6651 plying on route no.551 under DTC came from opposite direction and took a right turn abruptly on the crossing. The claimant applied break and swerved the scooter to its right. In spite of this, the front left side portion of the bus struck against the scooter. As a result of the impact with the two-wheeler, the claimant suffered post traumatic deformity and fracture of left hand fingers. The driver of the offending bus has not come forward to rebut the claimant's testimony. The negligence is therefore, sufficiently established. The finding on negligence cannot be faulted.
8. In a petition under Section 166 of the MV Act, the Claim

Tribunal and the Courts award full and fair compensation. In the case of *Raj Kumar v. Ajay Kumar & Anr.*, 2011 (1) SCC 343, the Supreme Court observed that the object of awarding damages is to make good the loss suffered as a result of the wrong done as far as money can do in a fair, reasonable and equitable manner. Paras 5 and 6 of the report are extracted hereunder:-

“5. The provision of the Motor Vehicles Act, 1988 ('the Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. [See C.K. Subramonia Iyer v. T. Kunhikuttan Nair, AIR 1970 SC 376, R.D. Hattangadi v. Pest Control (India) (P) Ltd., 1995 (1) SCC 551 and Baker v. Willoughby, 1970 AC 467.

6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.”

9. I will come to liability a little later. First of all, I will like to go into the quantum of compensation which has been awarded to

the claimant. It is borne out from the record that in the accident, the claimant suffered fracture left scapula, head injuries and a deep wound on his chin. He was immediately removed to Safdarjung Hospital and was then shifted to Ganga Ram Hospital. He was discharged from Ganga Ram Hospital on 30.05.1990. As per the discharge summery, the claimant suffered post traumatic deformity and fracture of left hand fingers with loss of sensation and loss of movement in the left hand. On the advice of the Medical Board, LNJP Hospital, the claimant also received treatment in Germany. The claimant is stated to have spent a sum of Rs.4,00,000/- on his treatment out of which, reimbursement of Rs.2,98,000/- was made. The claimant has not been able to give the details as to which of the expenses, except his air travel, was not reimbursed by the department. Rajiv Sharma PW-3 was examined by the Claimant. He testified that all medical expenses incurred by the Claimant while taking treatment abroad except conveyance/travelling expenses were reimbursed. The Claimant has not disclosed the amount of air travel. I am inclined to hold

that in the year 1990, the air travel to any city in Europe would cost about Rs.20,000/-.

10. In addition, I will further award a sum of Rs.20,000/- towards local conveyance and diet during the period of stay in Germany for the purpose of Claimant's treatment. So, apart from the reimbursement of the medical expenditure, the claimant is entitled to a sum of Rs.40,000/- on his air travel, local conveyance and diet in Germany.

LOSS OF EARNING CAPACITY:

11. In *Raj Kumar* (supra), the Supreme Court brought out the difference between permanent disability and functional disability resulting in the loss of earning capacity. It was laid down that the compensation on account of loss of earning capacity has to be granted in accordance to the nature of job undertaken by the victim of a motor accident. Paras 11 and 14 of the report are extracted hereunder:

“11. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income,

it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. 2010 (10) SCC 254 and Yadava Kumar v. D.M., National Insurance Co. Ltd. 2010 (10) SCC 341.

x x x x x x x

14. 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 find 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.”

12. The question that arises for consideration is whether the claimant has suffered any functional disability so as to affect his earning capacity.

LOSS OF EARNING CAPACITY

13. First of all I shall refer to the testimony of the Claimant who examined himself as PW-1. It is not in dispute that the Claimant suffered injuries. He recovered from the injuries in a period of about 5-6 months but ultimately he suffered permanent disability in respect of post traumatic deformity and fracture of left hand and fingers. As disclosed by PW-3 Rajiv Sharma, UDC from the Claimant's employer that the Claimant had jointed his duties finally on 04.01.1997 after several extension of leave including treatment abroad.
14. The Claimant tried to build up a case that he left the job because of the permanent disability and had to start his business. The record however speaks to the contrary. The Claimant continued

to work with Central Water Commission as Deputy Director till November, 1996. The Claimant's salary was also increased and he got usual increments. PW-3 testified that the Claimant was removed from service because of his misconduct as a vigilance inquiry was held for taking unauthorised leave. Thus, it was sufficiently proved that the Claimant's services were terminated because of his long unauthorised absence.

15. On this aspect, the Claimant deposed that after leaving his job he was assisting his brother in business of steel and cement. He further deposed that w.e.f. July, 2002 he had started his own business and trading in cement in Manesar. Thus, from continued employment with Central Water Commission for six long years after the accident his removal from the service because of his continued long unauthorised absence it is clear that the Claimant did not suffer any functional disability. Moreover, as far as his own earning, he initially assisted his brother in the business who was paying Rs.3800/- per month and then he started his own business and dealing in cement. Thus, the Claimant really did not suffer any functional

disability. He was, therefore, not entitled to any compensation towards loss of earning capacity.

16. At the same time, the Claimant ought to have been awarded compensation for loss of amenities, expectations of life and deformity. Taking into consideration the nature of disability suffered and that the Claimant ultimately started his own business, further that the accident took place in the year 1990, I will award him a sum of Rs.1,25,000/- towards loss of amenities, loss of expectations and disfigurement.

LOSS OF LEAVE

17. The Claimant met with an accident on 23.05.1990. He underwent treatment in Safdarjung Hospital and Ganga Ram Hospital. He consulted a number of Orthopaedic Surgeons and Neurologists available in the county and then received treatment at Hannover in Germany. The Claimant remained on leave for 6½ months. As per PW-3 Rajiv Sharma, the Claimant was getting a salary of Rs.4740/- per month at the time of accident. I will award him a sum of Rs.30,810/- (as against Rs.17,380/-

awarded by the Claims Tribunal) for six months and 15 days for the period of his leave irrespective of the fact whether the leave was without pay or with pay as the Claimant cannot lose the benefit of his paid leaves also.

18. The Claimant suffered serious injuries and must have needed an Attendant atleast for one month immediately after the accident and then intermittently. Even if gratuitous services were rendered by some or the other family members, the Claimant cannot be deprived of its benefit on the gain of the tortfeasor. I will therefore, award him a lumpsum compensation of Rs.10,000/- towards Attendant charges/gratuitous services rendered by the family members.

19. In view of the long treatment, the compensation towards conveyance and special diet is raised from Rs.10,000/- each to Rs.15,000/- each.

20. The compensation awarded thus comes as under:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal (Rs.)	Awarded by this Court (Rs.)
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1.	Loss of Earning	17,380 /-	30,810/-
2.	Medical Expenses	1,56,000/-	1,56,000/-
3.	Conveyance	10,000/-	15,000/-
4.	Special Diet	10,000/-	15,000/-
5.	Pain, Suffering and Mental Agony	50,000/-	50,000/-
6.	Loss of Future Life Amenities and Pleasure	50,000/-	1,25,000/-
7.	Loss on account of Permanent Disability	2,04,768/-	NIL
8.	Air Travel and Local conveyance in Germany	--	30,000/-
9.	Attendant charges	--	10,000/-
	Total	Rs.4,98,148/-	Rs.4,31,810/-

21. The overall compensation awarded by the Claims Tribunal therefore, seems to be just and reasonable. It does not call for any interference.

LIABILITY

22. Initially, DTC was not impleaded as one of the Respondents in the Claim Petition filed before the Claims Tribunal. It was only in the year 2001 that the DTC was impleaded. In the written

statement filed by the DTC a case was set up that the DTC was neither the owner nor the hirer of the vehicle. The vehicle was not being run under supervision and control of the DTC, rather the vehicle was run under 'Earn and Keep Scheme'. Although, the exact agreement between the owner of the bus and DTC was not produced, but a format Ex.RW-1/B was proved to show that the similar agreement was being entered into between the owners of the buses and the DTC. DTC has proved the format of the Agreement which used to be entered into between the persons providing buses as mark 'B'.

23. It was urged by the learned counsel for the DTC that the clauses 5 to 8 of the Agreement were struck out in respect of the Agreement which were entered during the time the accident occurred. Even if, it is assumed that Clauses 5 to 8, which stated about the payment by the DTC to owner of the buses under the kilometer scheme, it is not in dispute that the bus in question was still being run under the control of the DTC.
24. As per Clause 3(b) of the Agreement Ex.RW-1/B, the owner was to make the bus available for inspection in accordance with

direction of the Chairman of the DTC. The owner of the bus *i.e.* Narinder Singh (Respondent no.2 in MAC APP.233/2007 and MAC APP.371/2007) remained ex-parte before the Claims Tribunal. He has also not come forward to contest the appeal.

25. In the absence of any opposition by the owner of the bus, it shall have to be taken to be proved that the bus was being run by owner Narinder Singh Respondent no.2.
26. At this juncture, it will be appropriate to refer to some of the clauses of the Performa Agreement. Clause 3(a) required the owner of the bus to keep the vehicle insured whereas Clause 7 stated that the civil or criminal liability under tort was to be made by the owner. Clauses 3(a), 3(b), 7 and 19 of the Agreement are extracted hereunder:-

“3.(a) The party of the first part shall keep the bus particulars of which are given in Clause 1 of the agreement roadworthy in terms of Chapter-V of the Delhi Motor Vehicle Rules 1940 and carry out all necessary repairs at his own cost and within time allowed by Chairman-cum-M.D. DTC or any other officer authorised by him by a special or general order and shall also keep it duly insured covering third party’s risk.

3(b) The party of the first party shall make the bus available for inspection in accordance with the direction of Chairman-cum-M.D., DTC or any other officer authorised by him by a special or general order not only at the time of its engagement under DTC but also as and when required.

x x x x x x x x x x

7. The driver on the bus shall be proved by the party of the first party at his cost and he (driver) shall possess a valid heavy vehicle with P.S.V. endorsement as per Motor Vehicles Act, 1939. Delhi Transport Corporation shall not be liable for any criminal and/or civil liability arising out of an accident or any action of tort and the party of the first part shall be responsible for defending the driver in the criminal and/or Civil Court in respect of criminal case against the driver and/or claim cases either before Motor Accident Claim Tribunal or before any civil court against the owner.

In the event of claim for compensation being successfully, repudicated by the Insurance Company in the Court of Law, on the sole ground that the bus at the time of accident was overloaded, such cases shall be mutually considered by the parties.

x x x x x x x x x x

19. (a) The party of the first part shall bear full reasons responsibility for the payment of compensation under any law or enactment and under no circumstances, the party of the second part shall be responsible for any civil action, action of tort or any other action arising out of operation of the bus particulars of which are given in Clause 1 of the agreement under DTC

operation.”

27. Thus, it is evident that it was the obligation of the owner of the bus to keep the vehicle insured and to satisfy the tortuous civil liability but, can the DTC absolve itself completely of its obligation to pay the compensation even initially. If I give a meaningful interpretation to the various clauses some of which have been extracted hereinabove, it will be seen that there was good amount to control not only with regard to the route on which the bus was to be run but also with regard to safety of the passengers and the road users. The DTC had also kept with itself the power to inspect the hirer vehicle and to direct the owner to rectify the defect. It was also the obligation of the DTC to ensure that the vehicle is properly insured to meet the liability under the Motor Vehicles Act. Thus, to my mind, DTC cannot shirk its liability towards third party, but in view of the agreement Ex.RW-1/B, since it was the primary responsibility of the owner to keep the vehicle insured and to satisfy the liability for any tortuous act, the owner cannot escape the liability.

28. Thus, there is no escape from the conclusion that DTC and the other Respondents are jointly and severally liable to pay the compensation.
29. It is urged by the learned counsel for the DTC that since the DTC was impleaded only in the year 2001, the DTC cannot be fasten with the liability to pay any interest prior to the impleadment of DTC.
30. Since the agreement between DTC and the owner of the bus was not binding on third parties, the interest for the period prior to 2001 cannot be denied to the Claimant, but at the same time, in view of various clauses including the one under which the vehicle was to be kept insured and it was the obligation of the owner to satisfy the tortuous liability under the M.V. Act, although, DTC will be initially liable to pay the compensation awarded, but will be entitled to recover the same from the owner of the bus in execution of this very judgment without having recourse to any independent civil proceedings.
31. By an order dated 11.01.2010, DTC was directed to deposit the

entire awarded compensation. It will be expedient to extract relevant portions of the orders dated 11.01.2010 and 01.02.2010 hereunder:-

Order dated 11.01.2010

3. The appellant has challenged this award on the short ground that the vehicle was owned by Narinder Singh at the time of the accident and under the agreement between Narinder Singh and DTC, Narinder Singh was liable to insure the vehicle and was liable to pay the compensation in the event of accident.

4. The learned senior counsel for respondent No.1 submits that it was the duty of the DTC to ensure that the offending vehicle was validly insured at the time of the accident. Section 146 of the Motor Vehicles Act provides that no person shall use or cause or allow any other person to use the motor vehicle in public place unless it is validly insured and Section 196 of the Motor Vehicles Act provides for prosecution for driving uninsured vehicle. The learned Senior Counsel for respondent No.1 submits that owner, driver as well as DTC are liable to be prosecuted and punished under Section 196 of the Motor Vehicles Act which provides that whoever drives or causes or allows the uninsured motor vehicle to be driven is liable to be punished. DTC has clearly failed in its duty by permitting the uninsured vehicle to be plied on road.

5. In the facts and circumstances of this case, the ex-parte interim order dated 24th April, 2007 is modified. The appellant is directed to deposit the entire award amount along with interest with the

Registrar General of this Court within two weeks. Upon the aforesaid deposit being made, Registrar General is directed to keep the said amount in fixed deposit till further order.”

Order dated 01.02.2010

“1. The learned counsel for the appellant submits that agreement between appellant and respondent No.2 has not been proved before the Claims Tribunal and therefore the appellant could not be held liable to pay the award amount.

2. In para 2 (vi), the appellant has admitted having agreement with respondent No.2 and it has been specifically pleaded that a copy of the similar agreement has been filed as Annexure A-6. Para 2 (vi) is reproduced hereunder:-

vi. That DTC had entered into an agreement with the private owners of the buses to run these buses on the KM scheme. Since the matter is an old one, hence the records were destroyed as per the norms of DTC. A letter-dated 9.10.2000 supports the contention of DTC and the same is annexed hereto as ANNEXURE-A-5

However, similar agreement of the appellant with another private bus owner, which is identical with the agreement entered into by the appellant (only the name of the owner of the bus is different) is placed on record and the same is annexed herein as ANNEXURE-A-6.?

3. In view of the aforesaid admission of the appellant, the interim order dated 11th January, 2010 does not call any modification. However it is made clear that Order dated 11th January, 2010 requiring the appellant to deposit the entire award

amount along with interest as an interim order subject to final order that will be passed after hearing all the parties and the award amount be deposited by the appellant in terms of order dated 11th January, 2010 within three weeks without prejudice to the grounds raised in this appeal. It is also made clear that if the appellant finally succeeds in this appeal, the appellant would be entitled to recovery rights against respondent No.2.”

32. Thus, liability of DTC to satisfy the award is clearly made out.

At the same time, DTC will be entitled to recover the compensation paid from Narinder Singh, owner of the bus no.DEF-6651, Respondent no.2 in the appeals.

33. The amount deposited shall be released to the claimants in terms of the orders passed by the Claims Tribunal.

34. Both the appeals are disposed of in above terms.

(G.P. MITTAL)
JUDGE

FEBRUARY 19, 2015
pst/vk