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

Decided on: 10th February, 2015

\+ **MAC.APP. 629/2007**

ANIL CHAUDHRY …. Appellant
Through: *Appearance not given.*

versus

NATIONAL INSURANCE CO. LTD. ..... Respondents
Through: Mr. Pardeep Gaur, Adv. for R-1.

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

G. P. MITTAL, J. ***(ORAL)***

1. The appeal is for enhancement of compensation of Rs.92,000/- with interest @ 6 % per annum from the date of filing of the petition granted to the Appellant for having suffered injuries in a motor vehicular accident which occurred on 15.04.1993.

2. During enquiry, the Claims Tribunal on appreciation of evidence found that the accident was caused due to rash and negligent driving of a truck bearing no.DEG-2343 as well as the Appellant himself and hence, it assessed equal contribution of

both the parties and made the Respondent Insurance company liable to pay compensation only of 50% of Rs.1,84,000/-, i.e., Rs92,000/-. While doing so, the Claims Tribunal awarded Rs.10,000/- for purchase of medicines, Rs.5,000/- towards conveyance charges and Rs.5,000/- towards special diet, Rs.20,000/- towards pain and sufferings, and Rs.1,44,000/- towards loss of earning capacity. On date of the accident, the functional disability caused to the Appellant comes to be 25% on an income of Rs.3,000/- per month.

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

(1) The Appellant proved his income to be Rs.10,000/- per month but the Claims Tribunal assessed the income to be Rs.3,000/- per month;

(2) Although there was 50% disability on account of injury in his right eye, the Claims Tribunal granted compensation only to the extent of 25% functional disability;

(3) The compensation awarded towards pecuniary and non-pecuniary damages is on the lower side; and

(4) There is no negligence on the part of the Appellant and thus, the Claims Tribunal erred in making the tortfeasor liable to pay only 50% of the awarded compensation.

5. On the other hand, the learned counsel for the Respondent National Insurance Company Limited supports the impugned judgment and states that the compensation awarded is just and reasonable.

NEGLIGENCE

6. It is argued that the Claims Tribunal held the Appellant liable for contributory negligence simply because the doctor noticed the smell of alcohol upon the Appellant while preparing his MLC. Relying on judgment of the Supreme Court in *Jiju Kuruvila and others v. Kunjujamma Mohan and others, 2013 ACJ 2141,* learned counsel argues that simply on the ground of smell of alcohol, the Claims Tribunal ought not to have held that the Appellant also contributed to the negligence.

7. The Claims Tribunal analysed the evidence on negligence in para 5 and 6 of the impugned judgment which are extracted

hereunder:-

"***Negligence***

5. In order to prove negligence on the part of truck driver, petitioner testified that on 15.04.93 at about 10.30 PM the petitioner was driving the car no.DL-4C-2923 and was going on ring road. When he reached opposite Hot Mix Plant, the driver of truck bearing registration no. DEG-2343 which was going ahead of the car all of a sudden stopped the truck. To avoid impact, the petitioner swerved his vehicle to the left side and despite best efforts, the front portion of the car hit against the left rear portion of the truck. It is not in dispute that a case FIR, Ex.PW1/A was registered in respect of this accident.

6. *It is submitted by Ld. Counsel for insurance company that there was negligence on the part of petitioner who was under the influence of liquor at that time as well as it is who hit the truck. On the other hand, it is submitted by Ld. Counsel for petitioner that there was no negligence on the part of petitioner. The statement of petitioner regarding negligence on the part of truck driver remained unchallenged. Even the owner of the truck has not preferred to contest the claim petition. It is significant to note that insurance company specifically took the plea in the WS that accident has taken place due to the negligence of petitioner himself. It is proved from medical record that when the petitioner was taken to hospital after the accident there was smell of liquor in his breath. Though as per him, truck stopped abruptly and he swerved his vehicle to the left side but still the accident took place. It is a matter of common knowledge that a safe distance is to be kept between the vehicles while driving. The fact that despite of the efforts made by the petitioner he could not avoid the accident shows that he was also driving his car at a fast speed and*

also he has consumed liquor. Definitely there was contributory negligence on the part of the petitioner to the extent of 50%".

8. Thus, it was not merely on account of smell of alcohol that the Claims Tribunal held that the Appellant contributed to the negligence. It was mainly on account of the fact that the Appellant was driving his car bearing no.DL 4C 2933 too close behind the offending truck that the Claims Tribunal observed that the driver ought to have maintained a reasonable distance from the vehicle going ahead to control his vehicle as he was unable to avoid the impact even after swerving his car to the left. The finding reached by the Claims Tribunal cannot be faulted.

INCOME AND LOSS OF EARNING CAPACITY

9. The Appellant claims his income to be Rs.10,000/- per month. It was stated that the Appellant is a TV artist and producer of various serials. Admittedly, no income tax had been paid or any ITR filed by the Appellant till the date of the accident. For the first time such Income Tax Returns (ITRs) as per the learned counsel for the Appellant were filed in the years 2001 and 2002.

As any income beyond Rs.35,000/- per annum was subject to tax in the Assessment Year 1993-94, the Claims Tribunal took the monthly income of the Appellant as Rs.3,000/- per month at the time of the accident . It was clearly justified.

10. As far as disability is concerned, the disability certificate Ex.PW5/8 shows that the Appellant suffered from right eye corneal opacity with traumatic cataract No.PC loss of 6/6. Thus the disability was opined to be 50%. The Appellant remained under treatment in Guru Nanak Eye Centre. He consulted various surgeons in Mohan Eye Institute, Dr. R.B. Jain and Dr. Rajinder Prasad Centre for Ophthalmic Sciences (AIIMS). It was only thereafter that the certificate Ex.PW5/8 was issued. It is common knowledge that though each body part is required for normal day to day functions of life, yet the five sense organs of the body are the most essential which make life worth living. Eyes being one of the five, they are essential for every human being equally, be it in what ever vocation or profession. Moreover, since it was not disputed that the Appellant had produced a couple of serials and was also a TV

artist, his major source of earning would have been his face and since injury to the eye would have severely disfigured the face, or in other words, the functional disability in the instant case ought to have been taken as 50%.

11. Since the Appellant was not in permanent employment but was a self-employed person and in the absence of any specific evidence with regard to better future prospects, no addition is permissible in view of the three Judge Bench decision of the Supreme Court in *Reshma Kumari & Ors., v. Madan Mohan & Anr., (2013) 9 SCC 65* and of this Court in *HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi and Ors. MAC APP No. 189/ 2014* decided by this court on 12.01.2015. Loss of earning capacity, therefore comes to Rs.2,88,000/- (3,000 x 1/2 x 12 x 16).

PECUNIARY AND NON-PECUNIARY DAMAGES

13. Immediately after the accident, the Appellant was removed to AIIMS and then referred to Safdarjang Hospital where he was admitted from 16.4.93 to 22.4.93. Apart from serious injury in

his right eye, the Appellant suffered major fracture nasal bone along with fracture zygama and maxilla. He also fractured his ribs and right wrist. Documents have been placed on record to show that the Appellant remained an indoor patient from 16.4.93 to 22.4.93. He remained an outdoor patient in Guru Nanak Eye Centre, Dr. Hari Mohan Clinic as well. He also consulted Dr. R.P. Jain and remained under treatment till the end of the year 1994 in Dr. Rajinder Prasad Centre for Ophthalmic Sciences (AIIMS).

14. Considering the prolonged treatment and the disability suffered, the compensation towards pecuniary and non-pecuniary damages needs to be enhanced. I tend to award the following compensation:

S.No.	**Head of compensation**	**Granted by this Court.**
1.	Loss of dependency	Rs.2,88,000/-
1.	Conveyance Charges	Rs.15,000/-
2.	Special diet	Rs.15,000/-
3.	Pain and suffering	Rs.20,000/-
4.	Loss of amenities	Rs.50,000/-

5.	Cost of treatment and medicines	Rs.20,000/-
	Total	**Rs.4,08,000/-**

15. The compensation therefore, is enhanced from Rs.1,84,000/- to Rs.4,08,000/-.

16. The Claims Tribunal awarded interest @ 6% per annum. The claim petition was filed in October, 1993, The interest rates from 1993 to 2003 and again from 2007 were quite high. In view of the same, award of interest @ 6% per annum seems to be on the lower side. The Appellant would be entitled to interest @ 7.5% per annum from the date of filing of the petition till its payment.

17. Since I have affirmed the Claims Tribunal finding of contributory negligence 50% of enhanced compensation *i.e.* Rs.1,12,000/- (50% of Rs.2,24,000/-) along with the difference in interest on the amount already paid and the interest @ 7.5 % per annum on the enhanced compensation from the date of filing of the petition shall be deposited with the UCO Bank,

Delhi High Court Branch, in the name of the Appellant and shall be released on deposit.

18. This amount has been awarded considering that the accident took place in the year 1993.

19. Pending applications stand disposed of.

20. *Dasti.*

(G.P. MITTAL)
JUDGE

FEBRUARY 10, 2015
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