

\$~R-15A

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

Date of Decision: 16th February, 2016

+ **MAC.APP. 11/2007**

ITHAPE PRADEEP BHANSAHEB

..... Appellant

Through Mr. R K Bachahan, Adv.

versus

RAJENDER KUMAR ANAND alias RAJINDE

..... Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellant was serving in the rank of SWR in 61 Cavalry of Indian Army on 29.05.2004 when he had the reason to be in the vicinity of New Delhi railway station. He ventured out on some errand towards Paharganj side of the said railway station and was in the process of crossing a routinely busy road connecting Connaught Place on the southern end and Paharganj on the other, when he was hit by car bearing registration No.DL 3CV 7896 (the offending vehicle), driven and owned by the first respondent and admittedly insured against third party risk with the second respondent (the insured). The appellant suffered injuries and, as would be noted in due course, permanent disability on this count. On his claim petition under Section 166 of the Motor Vehicles Act, 1988 (MV Act), registered as suit No.31/2006, the Motor Accident Claims Tribunal (the Tribunal) by

judgment dated 31.07.2006 held compensation awardable in his favour to be Rs.60,000/-. The Tribunal, at the same time, held that the appellant had been guilty of contributory negligence to the extent of 25% inasmuch as he had failed to abide by the traffic discipline of crossing the road, if need be, at the zebra line. Thus, the insurance company was directed to pay only 75% of the awarded compensation i.e. sum of Rs.45,000/- with interest at 6% per annum from the date of filing of the petition (29.01.2005) till realization.

2. The appeal at hand questioned not only the finding of contributory negligence but also the method of computation of compensation.

3. During the course of hearing on the appeal, on his request through application under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (CPC), the appellant was allowed opportunity to adduce additional evidence. He examined Hawaldar Shakru (AW1) of B.Sqn of 61 Cavalry, Delhi Cant.; Sh. Upendra (AW2) Clerk of B.Sqn of 61 Cavalry, Delhi Cant.; Major Nikhil Sood (AW3), Graded Specialist Orthopaedic, Base Hospital (Delhi Cantt.); Risaldar Tomar (AW4) a Junior Commissioned Officer B.Sqn of 61 Cavalry, Delhi Cant.; and, Shailendra Kuamr (AW5), Assistant Accounts Officer in the office of Principal Comptroller of Defence Accounts (Allahabad).

4. The learned counsel for the appellant, at the hearing, pointed out that compensation has been computed by the Tribunal in the following manner :

i) Pain and agony	:	Rs.15,000/-
ii) Special diet	:	Rs.5,000/-
iii) Conveyance	:	Rs.2,000/-
iv) Loss of leave	:	Rs.8,000/-
v) Compensation for disability	:	Rs.20,000/-

vi) Loss of future prospects of
delayed promotional avenues
towards loss of expectation of life: Rs.10,000/-

Total : Rs.60,000/-

5. It is the submission of the appellant that compensation towards loss of future income has not been properly taken care of and further there is no award on account of loss of amenities of life as a result of disability suffered.

6. From the documents proved before the Tribunal, and by way of additional evidence in this regard, it is proved that the appellant was born on 04.07.1976 and was discharged from Army service at the age of 37 years on 20.09.2013. The documents relating to release show that he was discharged from army service on 20.06.2013 upon findings that he suffers from two causes of disability, each assessed to be permanent in nature to the extent of 20%, one attributable to the military service and the other neither attributable to nor aggravated by military service. It is the second disability, arising out of bimalleolar fracture of left ankle (OPTD), which was suffered by the appellant in the accident which is the subject matter of the case at hand.

7. While it is true that the appellant did not suffer any loss of income during his army service on account of the injuries sustained in the accident, the disability consequent upon the said injury would undoubtedly have impact on his future capability to be gainfully employed. It is noted even in the papers relating to discharge from army service that he was found to be unfit for any sheltered appointment.

8. Thus, the loss of future earnings on account of 20% functional disability consequent upon the injuries suffered in the accident needs to be

compensated having regard to the fact that the loss of employment occurred at the age of 37 years.

9. The documents proved by the appellant during the opportunity for additional evidence show that the last emoluments drawn at the time of discharge from army service was to the tune of Rs.28,377/- (Ex.AW5/1). Admittedly, the appellant is entitled to disability pension and, thus, the pension earned by him on account of army service continues to be 50% of the last pay drawn. There is, thus, reduction in income to the extent of 50% at that point of time. Thus, the loss of future earnings will have to be computed taking into account the income of Rs.14,188/- per month. Since the disability suffered is 20%, the loss of future earnings per month would come to Rs.2,838/-. As the multiplier of 15 would apply, the total loss of future earnings is calculated at $(2838 \times 12 \times 15)$ Rs.5,10,840/-.

10. It is noted that loss of amenities on account of disability suffered have also not been considered or compensated. Having regard to the date of the accident, a composite sum of Rs.20,000/- on that account is added. Thus, the compensation requires to be enhanced by a sum of Rs.5,30,840/-. After adjusting Rs.10,000/- awarded by the Tribunal under the head of loss of future prospects etc., the net increase in the compensation works out to Rs.5,20,840/- rounded off to Rs.5,21,000/-.

11. Coming to the question of contributory negligence, having heard both sides and perused the record, this Court is of the opinion that the Tribunal fell into a serious error by accepting the contention ignoring the fact that the respondent has not shown by any evidence that there was a zebra crossing in existence at the place of accident. In absence of such proof, the appellant could not have been accused or found guilty of contributory negligence.

12. As a result of the above conclusions, the total compensation payable to the appellant comes to Rs.5,21,000/- (Rupees Five Lakh and Twenty One Thousand only) which shall carry interest as levied by the Tribunal. The compensation paid under no-fault liability clause, if any, shall be suitably adjusted.

13. The insurance company is directed to pay the compensation in terms of the award modified as above within 30 days by depositing the same with the Tribunal. The Tribunal shall release 10% (Ten per cent) of the awarded amount to the claimant and keep the balance deposited in the name of the appellant in a nationalist bank in an interest bearing fixed deposit receipt for a period of 10 years with right to draw quarterly interest.

14. The appeal is disposed of in above terms.

15. Lower court record be returned.

R.K. GAUBA
(JUDGE)

FEBRUARY 16, 2016
VLD