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

Date of Decision: 01st March, 2016

+ **MAC.APP. 11/2004**

GORI SHANKAR Appellant
Through Mr. R K Sharma, Adv. for Mr. G S
Sharma, Adv.

versus

ISHWAR SINGH & ORS. Respondent
Through Mr. Navneet Goyal, Adv. for R-1
Mr. Pankaj Seth, Adv. for R-3

+ **MAC.APP. 204/2014**

GORI SHANKER & ORS Appellant
Through Mr. R K Sharma, Adv. for Mr. G S
Sharma, Adv.

versus

UNITED INDIA INSURANCE CO LTD Respondent
Through Mr. Pankaj Seth, Adv.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Gori Shanker, then serving as captain in Indian Army with posting in 1 Air Signal Regiment, c/o 56, A.P.O. suffered injuries in motor vehicular accident that occurred on 19.09.1992 when the two wheeler scooter he was

riding is stated to have been hit by bus bearing registration No.DL 1P 1061 (the offending vehicle). He brought a claim petition under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) before the Motor Accident Claims Tribunal (the Tribunal) on 21.12.1992 seeking compensation, which was registered as MACT case No.79/2002. In the claim petition Ishwar Singh and Raju were impleaded as first and second respondents on the averment that they were owner and driver respectively of the offending vehicle. United India Insurance Co. was also impleaded as party respondent (third respondent) in the claim case on the averment that the offending vehicle was insured with it against third party risk for the period in question. It may be added here that the said insurance company (insurer) while participating in the inquiry conceded the factum of insurance though came up with the plea of breach of terms and conditions of the policy on the ground that Raju (the driver) was not holding an effective driving license for a heavy motor vehicle bus (HMV) inasmuch as the driving license relied upon on his behalf was meant for light motor vehicle (LMV) purportedly issued by licensing authority at Karnal (Haryana).

2. The Tribunal held inquiry in the course of which the claimant Gori Shanker examined himself as PW1. On the other hand, the driver and owner chose not to participate and instead suffered the proceedings *ex parte*. The insurance company examined Kuldeep Singh, Assistant Administrative Officer (RW3/1), to prove the breach of terms and conditions of the policy. The Tribunal awarded compensation in the sum of Rs.2,44,000/- with interest at 8% per annum from the date of filing of the petition. While directing the insurance company to pay the said amount for compensation it

was granted rights to recover the said amount from the owner and driver of the offending vehicle.

3. The Tribunal assessed the compensation in the following manner:

12. The petitioner has deposed that due to the accident in question, he lost his left eye completely and right eye to the extent of 60% i.e. there is total blindness without glass and improving to 6/9 with correction. The certificate of blindness has been proved on record as Ex. PW1/A. He has also placed on record the hospital records which are Ex. PW1/B1 to 8 collectively. The salary certificate showing that he was working as a captain and was drawing Rs.7,000/- per month, has been proved by Ex. PW1/9. He has further proved that due to accident, in this case, he had to remain away from his duty for a prolonged period and on this account 33 days of leave amounting to salary of Rs.12,000/- were deducted from his leave account.

He has placed on record the certificate of loss of salary and bills as Ex. PW1/10. He has also stated that he spent on medicines and conveyance a sum of Rs .75,000/-.

13. A careful perusal of the aforesaid documents which find no challenge on record by the respondents, I find that due to the occurrence in this case, the petitioner sustained complete loss of one eye and in the second eye which is right eye, he sustained injuries to the extent of 60% loss. He remained in hospital for a continuous period of about 100 days and had to take up follow up treatment' Due to the loss of sight from one eye completely, he lost future chances of promotion and became eligible for being boarded out prematurely on medical grounds. The true extent of loss of amenities, enjoyment of life and mental pain cannot be ascertained. However, in my esteemed opinion, the following compensation shall be just and fair in the circumstances of the cases.-

- (a) Loss of pay/wages for about 100 days when the petitioner was confined to in the hospital (He has proved that his salary was Rs.7,000/- per month at the relevant time) Rs.24,000
- (b) Loss of leave of 33 days due to prolonged absence from duty as per Ex.PW1/10 Rs.12,000
- (c) Compensation on account of medicines etc. (the petitioner has placed on record some medical bills and other expenses in connection with the treatment of his eyes which he got from various hospitals and which comes to Rs.13,000/-. The most of the treatment, however, was received by the petitioner in Army Hospital where the treatment was free) Rs.13,000
- (d) Compensation on account of transportation(in the absence of any specific proof) Rs-10,000
- (e) Compensation on account of nutritious food which the petitioner might have consumed during the period of intensive treatment Rs .10,000
- (f) Compensation on account of permanent loss of one eye Rs .1,50, 000

and loss to the extent of 60% of the other eye.

<i>(g) Compensation on account of mental and physical pain due to the occurrence in this case</i>	<i>Rs. 25,000</i>
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<i>Total</i>	<i>Rs.2,44,000</i>
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Thus the petitioner is, therefore, entitled to the compensation of Rs.2,44,000/- including the interim award, if any."

4. The insurance company filed appeal on 31.10.2003 registered as FAO No.274/2003, mainly to contend that the directions given to it by the impugned judgment of the Tribunal regarding recovery rights were vague and not acceptable. The appeal of the insurer, was, however, dismissed by a learned Single Judge of this Court by judgment dated 25.02.2014.

5. The claimant Gori Shanker, on the other hand, also feeling aggrieved came up with appeal (MAC.APP.No.11/2004) seeking enhancement of the compensation. During the course of the hearing on the said appeal, after notice had been issued to the party respondents, Ishwar Singh (the owner of the offending vehicle) came up with cross-objections (CM No.10586/2007) which were directed to be registered as independent appeal by order dated 25.02.2014. Accordingly, the said cross-objections of Ishwar Singh (the owner) of the offending vehicle have come up as independent and connected appeal (MAC.APP.No.204/2014).

6. It may be noted that the contention of the owner in his appeal is that Raju (the driver of the offending vehicle) was holding a valid driving license

issued by licensing authority Mathura, UP, which had been seen by him (owner) at the time of he (driver) being engaged for such purposes.

7. In the appeal of the claimant, it has been pointed out that though evidence had been adduced to show that he had suffered complete loss of sight in one eye and loss of sight to the extent of 60% in the other eye, no assessment of the consequent loss of future earnings was made or awarded. It has also been pointed out that the claimant became medically unfit for continued service in the Indian Army and resultantly had to be boarded out as unfit on low medical category and had also suffered loss of promotional avenues as indeed loss of any possibility of being rehabilitated in civil employment after superannuation from the Army service.

8. It is noted that that claim petition having been filed in 1992, the claimant examined himself on 11.01.2002 wherein he declared his particulars indicating he had since been retired from army service. Though the circumstances tell their own story, no evidence was led to bring on record as to the specific reasons leading to the claimant being boarded out medically from army service. It does not call for much imagination to conclude that total loss of sight in one eye and loss of sight to the extent of 60% in the other eye would indeed have affected not only the career of the claimant in Army but also rendered bleak chances of his civil employment after he had been superannuated. The compensation awarded by the tribunal does not take care of these losses. For the inadequate assessment made, however, the claimant would have to blame himself or the counsel who was assisting him in prosecuting the case on his behalf.

9. Be that as it may, the approach of the Tribunal on the subject also seems to have been very casual and callous. It made no effort to reach appropriate assessment of the just compensation that deserved to be awarded in this case. Having noticed that the claimant had suffered loss of eyesight completely in one eye and substantially in the other, there should have been no difficulty in ascertaining the requisite information and assessing the loss of future earnings. The observation of the Tribunal in the impugned judgment that “*the true extent of loss of amenities, enjoyment of life and mental pain cannot be ascertained*” cannot be approved of. The Tribunal has undertaken a very rough shod manner in arriving at some figure of compensation which is not a very healthy approach.

10. It is noted that the Tribunal did not even consider the evidence of the insurer. It simply observed (in para 14) that in view of the testimony of RW3/1, the insurer will be entitled to recover the compensation paid to the claimant from the driver or owner. One does not understand as to how in absence of any contractual arrangement, there can be a recovery right granted against the driver. Be that as it may, the contention of the owner in his appeal now claiming that a valid driving license existed would need to be probed.

11. In above facts and circumstances, this Court agrees with the submission that question of computation of compensation having not been properly addressed or inquired into by the Tribunal, appropriate course would be to remit to the tribunal the matter for inquiry, limited to that

extent, of course, coupled with inquiry into the claim of the owner respecting the driving license. Ordered accordingly.

12. For removal of doubts, it is clarified that the finding about the fault of the driver of the bus is not being disturbed and, therefore, the only question to be addressed, from the perspective of the claimant, would be as to how much compensation was payable to him in accordance with law for the injuries and consequent disability suffered.

13. The parties are directed to appear before the Tribunal for further proceedings in accordance with law on 25.04.2016.

14. Given the fact that the accident had occurred in 1992, the Tribunal would be expected to hold further inquiry expeditiously and take a fresh decision on the compensation, and the plea of recovery rights, at an early date, preferably within four months of the date now fixed for the first appearance. It may further be added that while passing the fresh award of compensation, the Tribunal shall bear in mind, in fixing the rate and period of interest leviable, the neglect caused by the claimant himself in prompt, timely and effective prosecution of the claim case. It is further clarified that the amount already paid to the claimant shall be suitably adjusted.

15. The appeals are disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 01, 2016/VLD