

\$~R-14

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

Date of Decision: 25th February, 2016

+ **MAC.APP. 1011/2006**

VINOD KUMAR

..... Appellant

Through Mr. Saurabh Kansal, Adv.

versus

MEHTAB AND ANR.

..... Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellant, then aged 39 years, working as motor mechanic, suffered injuries in a motor vehicular accident at about 10 AM on 31.07.2002 in the area near Prem Bari Bridge opposite Punjab Kesri, Delhi when a bus of Delhi Transport Corporation (DTC) bearing registration No.DL 1P 1201(the offending vehicle) which had crossed over from the other side, breaking the road divider, so as to ram into the two wheeler scooter bearing DL 4S Y 3552 (the scooter) on which he was a pillion rider. The appellant suffered injuries all over his body, particularly in the forehead, right wrist, left thigh, skull, chest, pelvis etc. and was taken to hospital where he underwent prolonged treatment including for fracture in the left thigh. After

the treatment it was found that he had suffered disability with respect to the left shaft femur bone which had been shortened to the extent of two inches coupled with mild limitation of movement at right knee joint. He was certified (Ex.PW2/1) to be permanently disabled, the disability having been assessed to the extent of 22½%.

2. The appellant filed claim petition seeking compensation from DTC and the driver of the offending vehicle, the petition having been registered as suit No.236/03/01. After inquiry the Motor Accident Claims Tribunal (the Tribunal) concluded that he had suffered functional disability of 12% and passed an award of ₹1,35,000/- as compensation with interest at 12% per annum from the date of filing to the petition (02.11.2001) and thereafter at 9% per annum from the date of award. The DTC, owner of the offending vehicle and employer of the driver thereof was directed to pay the awarded compensation within 30 days and in case of default to suffer penal interest at 12% per annum.

3. The appellant, by way of appeal at hand, has sought enhancement of the compensation. The contentions raised on his behalf are that the disability has been under-assessed at 12% instead of what was certified by the medical board, no award having been made to take care of the needs of future medical expenses, and the awards under the heads of expenditure on conveyance, loss of amenities and pain & suffering being on the lower side. The Tribunal considered the question of disability in the following words :

“The bills for conveyance have not been produced but however in the interest of justice a sum of ₹2,000/- is being assessed as reasonable in the circumstances. The petitioner has not led any

evidence with regard to his occupation or income and as such his income is being assessed in accordance with the schedule under the minimum wages act as being ₹2600/- p.m. and keeping in view the medical record of the petitioner which shows that he underwent shortening of leg, his disability with respect to the whole body is being assessed as 12% and the absence of the petitioner from his occupation is being taken as for a period of 4 months, as the petitioner remained admitted in hospital for a period of 1 & ½ months and thereafter in view of his injuries may have required rest for another period of 2 & ½ months, as such actual loss of income that the petitioner may have suffered would come to a sum of ₹10,400/-. Since the petitioner has suffered permanent disability on account of his injury, his loss of income is being assessed as per the IIInd schedule, clause 5 of the MV Act 1988 as amended up to 1994. The annual income of the petitioner would come to a sum of ₹31,200/- and taking his age as 40 years, as stated in the entire medical record produced by the petitioner himself, a multiplier of 16 is being adopted which shall be a sum of ₹4,99,200/- as the total loss of income. Since the permanent disablement of the petitioner is partial and not total, the disability with respect to the whole body i.e. about 12%, the total loss of income of petitioner would come to a sum of ₹59,904/-. As such the loss of income of the petitioner and the loss of his earning capacity in all is being assessed as a sum of ₹70,304/-."

4. Indeed, there are no reasons given by the Tribunal as on what basis it concluded that the functional disability would have to be assessed at 12%. Having regard to the guidance given by the judgment in *Raj Kumar v. Ajay Kumar & Anr.* (2011) 1 SCC 343, the functional disability, as against disability in relation to part of the body affected has to be properly assessed. It is, however, clear from the disability certificate (Ex.PW-2/1) that the assessment was made by the board of doctors as to disability in relation to the whole body.

5. In case of *Master Mallikarjun v. Divisional Manager, The National Insurance Company Ltd.* (2014) 14 SCC 396, the right leg of the claimant had been injured as a result of which the movement of the said limb had been restricted. This primarily is the state to which the appellant has been rendered. Therefore, the argument of the claimant based on the said precedent that his functional disability should have been assessed to the extent of 18%, as was the view taken in the said case, deserves to be accepted.

6. The learned counsel for the claimant fairly submitted that in absence of formal proof of income, the Tribunal was well justified in adopting the minimum wages (₹2,600/- per month) as the notional income. Thus, the loss of future earnings on account of effect of disability to the extent of 18% is to be computed on such basis. The monthly loss being to the extent of $(2,644 \times 18 \div 100)$ ₹468/-, on the basis of multiplier of 15 (since the appellant was 39 years old at the relevant point of time), the total loss of future earnings is calculated as $(468 \times 12 \times 15)$ ₹84,240/-. The Tribunal had granted the loss of income for a period four months calculating it as ₹10,400/-. Thus, the total loss of income, during the treatment and in future, comes to $(84,240 + 10,400)$ ₹94,640/- rounded off to ₹95,000/-.

7. No proof of expenditure on conveyance was adduced. The Tribunal assessed it at ₹2,000/-. Having regard to the fact that the accident had occurred in July, 2002 as also the fact that the appellant had to undergo treatment for four months, the said amount is increased to ₹10,000/-.

8. The plea that future medical expense have not been taken care of appears to be correct inasmuch as the appellant has shown by documents in nature of discharge summary of Ganga Ram Hospital indicating further treatment engaged in February, 2006 due to complications arising out of the injuries suffered. But then, the appellant has not brought on record any receipts of actual payments beyond ₹22,547/- which was shown during the inquiry. In the overall facts and circumstances of the case, the award under the head of medical expenses incurred prior to the inquiry before Tribunal and after its judgment, is assessed at ₹30,000/-.

9. The Tribunal awarded ₹40,000/- towards pain and suffering. It is noted that there was no award on account of loss of amenities of life. Having regard to the nature of injuries/disability suffered, award of ₹50,000/- each under the heads of pain & suffering and loss of amenities of life appears to be just and proper.

10. Thus, the total compensation payable in the case at hand comes to (95,000 + 10,000 + 30,000 + 50,000 + 50,000) ₹2,35,000/- (Rupees Two Lakhs and Thirty Five Thousand Only).

11. It is noticed that interest was levied by the tribunal at unduly high rate of 12%. Having regard to the consistent view taken by the Supreme Court in series of cases, it is directed that the award of compensation shall carry interest at 9% per annum from the date of filing of petition till realization. [Kaushnuma Begum vs New India Assurance Co. Ltd. (2001) 2 SCC 9; Supe Dei vs National Insurance Co. Ltd. (2009) 4 SCC 513; Municipal Corporation of Delhi, Delhi vs Association of Victims of Uphaar Tragedy

and Ors. (2011) 14 SCC 481; *Basappa vs T. Ramesh* (2014) 10 SCC 789; *Syed Sadiq etc. vs Divisional Manager, United India Ins. Company* (2014) 2 SCC 735; *Surti Gupta vs United India Insurance Company and Ors.* 2015 (3) SCALE 795; *Kumari Kiran vs Sajjan Singh* (2015) 1 SCC 539]

12. The award is modified as above.

13. The second respondent (DTC) is directed to pay the enhanced portion of the award with up-to-date interest to the appellant (claimant) by depositing it with the Tribunal within 30 days of this judgment. Needless to add DTC would be entitled to adjust the amount paid earlier in terms of the impugned judgment.

14. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

FEBRUARY 25, 2016/VLD