

\$~R-112

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 27.05.2016

+ MAC.APP. 18/2008

KIRPAL SINGH & ORS.

..... Appellants

Through : None.

Versus

PAPPU & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Pappu (the respondent) instituted an accident claim case (Suit No. 216/2005) on 21.11.2005 before the motor accident claims tribunal (tribunal), seeking compensation under Sections 140 and 166 of Motor Vehicles Act, 1988 (MV Act) on the averments that on 02.05.2005 he was returning in a hired auto rikshaw (Vikram TSR) bearing registration No. DL 1LE 6190 with fruits that he had purchased from Azadpur Sabzi Mandi, when in the area of Sansad Vihar Chowk, the TSR was involved in a collision with jeep bearing No. DDA 2416 (offending vehicle), driven negligently by Kirpal Singh (first appellant), resulting in he suffering injuries including fracture in left hand. The second appellant was impleaded as a party to the said proceedings, in addition to the driver, on the averments that it was the owner of the offending vehicle. After notice to the appellants, and having secured their written statement wherein they denied the factum

of accident but attributed negligence on the part of the driver of TSR, the tribunal held inquiry and, by judgment dated 31.05.2007, returned a finding in favour of the claimant (respondent). By the said judgment dated 31.05.2007, the tribunal awarded compensation in the sum of Rs. 6,29,080/- with interest in favour of the holding the appellants jointly and severally liable. The second appellant (being the owner) was directed to pay compensation by requisite deposit with the tribunal within 30 days.

2. The appeal at hand was filed vaguely submitting that judgment of the tribunal was contrary to facts and law and in disregard of the pleadings and evidence on record. It was also submitted that the claimant had not furnished any documentary proof of his income or that he had suffered loss of income for the period of four months.

3. The tribunal had found, *inter alia*, on the basis of disability certificate (Ex.PW1/F) that the claimant had suffered permanent disability to the extent of 68% and in that view awarded loss of future income. The appellants, by the appeal at hand, questioned the said assessment of functional disability pleading that the statement of Dr. Vijay Kumar Singh (PW-2) in this regard was inadmissible and should not have been believed.

4. In calculating the loss of future income, the tribunal had applied the multiplier of 18. The appellants raised issue in this regard also, arguing that no proper proof had been submitted towards expenditure on account of medical treatment, special diet, conveyance and fruits.

5. The appeal was admitted and, by order dated 25th February, 2009, was directed to be shown in regular list to come up on its own turn. When it was taken up on 25th May, 2009, the appellants would not appear. Consequently, the appeal with all pending applications was dismissed. On applications

(CM No. 12470-71/2009) subsequently moved, fresh notices were issued and, by order dated 7th April, 2010, the appeal was restored and again put into the category of regular matters. Thereafter, whenever the appeal has been taken up none would appear on behalf of the appellants.

6. The appeal being one of the oldest on board of this Court, there is no reason why it should be deferred yet again.

7. On perusal of the record, the appeal is found to be unmerited to the extent it raises the issue regarding negligence. The evidence of the claimant (as PW-1) was believed by the tribunal and for sound reasons. He was travelling in the TSR with his goods, fresh fruits purchased from the fruit market at Azadpur. The sequence of events narrated by him clearly show that the jeep had appeared at the scene in rash speed and had hit the TSR making it turn turtle. The evidence of the first appellant appearing in defence (as R2W1) was not accepted by the tribunal, referring in this context to the investigation in the criminal case where he had been prosecuted for negligent driving. In the given facts and circumstances, this Court is not inclined to interfere with the said finding on fact returned by the tribunal.

8. The claimant was proved by PW-2 to have suffered degloving injury with fracture of Ulna and fracture of neck and fourth metacarpal of the left upper limb. The medical board of Sanjay Gandhi Memorial Hospital of which PW-2 was a member had issued disability certificate (PW-1/F) declaring the claimant to be a case of permanent disability to the extent of 68% in relation to the left upper limb.

9. It does appear that the disability certificate was issued on 21.12.2006, more than one and half years after the accident. But, the time gap between the injury suffered and the issuance of disability certificate is

inconsequential. It has to be borne in mind that after the injuries are suffered, the medical authorities generally take time in letting the body settle down and reveal eventually the disability, if any, persisting, before its nature or extent can be evaluated.

10. There is, however, merit in the appeal to the extent that the disability of 68% in relation to the left upper limb could not have been treated as functional disability in relation to the whole body. The claimant was earning his livelihood as a fruit seller. Undoubtedly, the disability in one of the upper limbs would affect not only the quality of his life but also his earning capacity. Given the nature of injuries and the effects suffered, and pertinently the fact that the material on record shows that the surgical procedure undergone included insertion of steel rod, loss of earning capacity in the case at hand could not have been more than 50%.

11. The tribunal assumed the income of the claimant at 3,500/- per month on the basis of minimum wages of a skilled worker at that relevant point of time. He (the claimant) had pleaded his age to be in the region of 30 years. In these circumstances, the loss of future income due to disability had to be computed with the multiplier of 17.

12. Therefore, the loss of future income due to disability is re-calculated as $(3500 \times 50 \div 100 \times 12 \times 17)$ Rs. 3,57,000/-. Since the tribunal had awarded Rs. 5,14,080/- under this head, the compensation on account of loss of future income must be reduced by $(5,14,080 - 3,57,000)$ Rs. 1,57,080/-

13. It is true that the claimant did not muster any clear evidence with regard to the expenditure incurred on account of medical treatment, special diet, conveyance or purchase of fruits which he was carrying at that point of time. Given the status in life of the claimant and the nature of injuries

suffered, as indeed the permanent disability caused by the same, the assessments made by the tribunal on above-mentioned heads of damages is found to be fair and just, calling for no interference.

14. In above view, the compensation awarded in the case is reduced to (6,29,080- 1,57,080) Rs. 4,72,000/-.

15. Following the consistent view taken by this Court, the rate of interest is increased to 9 % per annum from the date of filing of the petition till realization [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*].

16. By order dated 11th January, 2008, the appellants were directed to deposit 75% of the awarded amount with the Registrar General within the period specified. By order dated 5th December, 2008, 50% of the awarded amount was allowed to be released. When the appeal was suffered to be dismissed in default by order dated 25th May, 2009, the balance of the amount deposited was also ordered to be released.

17. The stay against enforcement of the award is vacated. The claimant is at liberty to recover the balance amount, if any, in terms of the modified award by appropriate proceedings before the tribunal.

18. The appeal is disposed of in above terms. The Registry shall send copies of the judgment to the appellant and claimant (first respondent) by registered post at their respective addresses.

(R.K. GAUBA)
JUDGE

MAY 27, 2016
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