

\$~R-351

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

Decided on: 24th October, 2017

+ **MAC APPEAL No. 520/2011**

DEVENDER SINGH

..... Appellant

Through: None.

versus

UPSRTC & ORS.

..... Respondents

Through: Mr. Shadab Khan for Ms.
Garima Prashad, Adv. for R-1.
Mr. Pankaj Seth, Adv. for R-4.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant, then aged 28 years, a graduate, engaged as a conductor on contract basis, suffered injuries in a motor vehicular accident that occurred on 25.11.2005 due to negligent driving of private bus bearing registration no. UP 14K 6883, (hereinafter referred to as the “private bus”), as also negligence on the part of the driver of another bus bearing registration UP 81 N 9446 of Uttar Pradesh State Road Transport Corporation (UPSRTC) (hereinafter referred to as “the bus of the UPSRTC”). He instituted accident claim case (MACT 211/2010) on 18.01.2006 impleading the drivers, owners and insurers respectively of both the buses as party respondents. On the basis of evidence led during the inquiry, the Tribunal, by judgment dated

05.03.2011, found a case made out for compensation holding the drivers of both the buses negligent apportioning the liability equally amongst them.

2. The Oriental Insurance Company Ltd.(second respondent), it being the insurer of the bus of UPSRTC had taken the plea that there was breach of terms and conditions of the insurance policy since Lakhpat Singh (fifth respondent), the driver of the said bus, was not holding a valid or effective driving licence. This plea was accepted and consequently the said insurer of the bus of UPSRTC was granted right to recover from UPSRTC and also the driver who were held jointly and severally liable. By the impugned judgment, the Tribunal awarded compensation in the total sum of Rs. 5,78,610/-, calculating it, thus:-

S.No.	Heads	Compensation
1.	Towards special diet	Rs. 15,000/-
2.	Towards conveyance allowance	Rs. 15,000/-
3.	Towards mental pain & agony	Rs. 50,000/-
4.	Towards loss of amenities of life and happiness frustration	Rs. 1,00,000/-
5.	Towards disfigurement & enjoyment of life	Rs. 50,000/-
6.	Towards functional disability	Rs. 3,20,362/-

7.	Towards medical expense	Rs. 4,692/-
8.	Towards not being able to do his duties for 6 months	Rs. 23,556
	Total	Rs. 5,78,610/-

3. It may be noted here that the claimant (the appellant) had suffered grievous injuries in the accident, his right lower limb above knee having been amputated to the extent of 1/3rd, the board of doctors constituted by Chief Medical Officer, Baghpat, UP having certified (Ex.PW-1/1) he to have been rendered permanently physically handicapped to the extent of 80%.

4. The tribunal concluded that the functional disability suffered by the appellant was 40% in relation to the whole body. It rejected the evidence that the appellant was earning Rs. 6,000/- per month and assumed the income notionally with the help of minimum wages (Rs.3,926) as payable to a graduate during the relevant period and granted the award accordingly.

5. The appeal at hand was filed primarily raising the grievance that the loss on account of permanent disability had not been properly assessed as the income of Rs. 6,000/- was wrongly ignored and that the disability should have been treated as 100%.

6. The appeal was admitted and directed to be put in the list of 'regulars' as per order dated 16.01.2012. When it is taken up for hearing, there is no appearance on behalf of the appellant.

7. The matter has been considered with the assistance of learned counsel for UPSRTC and the learned counsel representing both the insurance companies and by perusal of the record.

8. The grievance of the appellant about the evaluation of functional disability is correct. In similarly placed cases of amputation of one of the lower limbs above knee, this Court has followed the prescription in the first schedule appended to Employees Compensation Act, 1923, in one such case decided on 24.08.2017 (MAC Appeal No. 1068/2016 *National Insurance Company vs. Preeti Gupta & Ors.*), such condition of the victim being taken as one of functional disability to the extent of 80%. Since that was also the medical opinion in the instant case, the calculation should have been made accordingly.

9. There is, however, no substance in the grievance about the income. The claim that the appellant was earning Rs. 6,000/- per month was not substantiated by any cogent material. In these circumstances, the approach of the tribunal in going by the minimum wages of a graduate cannot be faulted. Since the functional disability by the tribunal has taken as 40%, and it is now being treated as 80%, Rs. 3,20362/- will require to be doubled to grant just compensation under the head of loss of future income.

10. The mental pain & agony at Rs. 50,000/- only is found to be inadequate. The said award is increased to Rs. 1,00,000/- and, consequently, the compensation in the case would stand enhanced by (3,20,362 + 50,000) Rs. 3,70,362/-. It is accordingly increased to (5,78,610 + 3,70,362) Rs.9,48,972/-, rounded off to Rs. 9,49,000/- (Nine Lakhs Forty Nine Thousand Only). The enhanced portion of the award shall carry interest @ 9% per annum from the date of filing of the petition till payment. The recovery rights granted by the tribunal shall remain undisturbed.

11. The respective insurance companies are obliged to make the requisite deposits with the tribunal in favour of the claimant within 30 days.

12. The appeal stands disposed of in above terms.

OCTOBER 24, 2017

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R.K.GAUBA, J.

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