

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

Date of Decision: April 12, 2017

(i) + **MAC. APP. 401/2009**

RAJASTHAN STATE ROAD TRANSPORT CORPORATION &
ORS. Appellants

Through: Dr. Ritu Bhardwaj, Standing
Counsel for appellant-RSRTC

versus

VIRENDER KUMAR Respondent

Through: Mr. S N Parashar, Advocate

(ii) + **MAC. APP. 274/2017**

VIRENDER KUMAR Appellant

Through: Mr. S N Parashar, Advocate

versus

RAJASTHAN STATE ROAD TRANSPORT CORPORATION &
ORS. Respondents

Through: Dr. Ritu Bhardwaj, Standing
Counsel for respondent-RSRTC

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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The above-captioned two appeals arise out of common impugned
Award of 24th March, 2009 vide which Motor Accident Claim Tribunal,
MAC. APPs.401/2009 & 274/2017

Delhi (*hereinafter referred to as 'The Tribunal'*) has granted compensation of ₹8,08,600/- with interest @ 7.5% p.a. on account of injuries sustained by Claimant-Virender in a road accident on 26th December, 2005. In the above-captioned first appeal, the owner of bus in question seeks reduction of quantum of compensation while asserting that it is a case of contributory negligence whereas, in the above-captioned second appeal, Claimant-Injured seeks enhancement of compensation.

As per order of 27th October, 2009, service is complete in these two Appeals. With the consent of learned counsel for the parties, these two appeals have been heard together and are being decided by this common judgment. The factual narration as noted in the impugned Award is as under:-

“Brief facts giving rise to the present claim petition are that on 26/12/2005 at about 4.00 pm, the injured/petitioner Virender was travelling in the offending bus bearing registration no.RJ 32PA 0018 from Delhi to Sohna. When we had reached at Rajeev Chowk, Gurgaon, Hariyana and was alighting from the offending bus, all of a sudden, the driver of the offending bus had driven the bus at high speed in rash and negligent manner. As a result thereof, the petitioner had fallen down on the road and the rear wheel of the offending bus had passed over his right leg. He was taken to Safdarjung Hospital where he had remained hospitalised and is still under treatment.”

Suffice to note that the Tribunal has taken the age of Claimant-Injured as 38 years on the day of accident in question and has noted that he was earning his livelihood by selling toys and was earning ₹8,000/-

per month. As per copy of Disability Certificate (*Ex.PW-1/7*), the permanent disability of Claimant-Injured is assessed as 80% in right lower limb due to amputation of right leg above knee. Claimant-Injured has relied upon Estimate (*EX PW-1/24*) from *TECHNOMED (INDIA) PRIVATE LIMITED* indicating that cost of obtaining an artificial limb in January, 2006 was ₹2,35,000/-. Apart from the evidence of Claimant-Injured, the Tribunal has taken into consideration the evidence of *Ram Singh (R-1/W1)*, driver of bus in question, to render the impugned Award.

While entertaining the appeal by *Rajasthan State Road Transport Corporation*-owner of the bus in question (*hereinafter referred to as owner-RSRTC*), a direction was issued to deposit the awarded compensation and it has been done. In terms of order of 27th October, 2009, out of the deposited compensation, amount of ₹1,75,000/- has been released to Claimant-Injured and rest of the deposited amount is lying in fixed deposit receipts.

Learned counsel for owner of bus in question submits that it is evident from the evidence of driver of bus in question that Claimant-Injured was negligent and even the bus-conductor had given his version to the police to the effect that injured had tried to get down from the bus when it was moving and in the process, injured's bags got stuck in the door, due to which he fell down and sustained injuries. So, it is submitted by counsel for bus owner that negligence was of Injured and not of bus driver and so, owner of bus in question is not liable to pay awarded compensation.

It is next contended by counsel for owner-RSRTC that the compensation granted is on the higher side as the multiplier of 16 has been applied whereas applicable multiplier as per Supreme Court's decision in *Sarla Verma & Others Vs. DTC & Another*, (2009) 6 SCC 121 is of 15 as Injured was aged 40 years on the day of accident. It is pointed out that as per ration card produced by Claimant-Injured, he was aged 40 years then.

On the contrary, learned counsel for Claimant-Injured submits that no compensation has been granted for purchase of artificial limb and the compensation granted under the non-pecuniary heads is on the lower side and so, it needs to be suitably enhanced. Nothing else is urged on behalf of either side.

Upon hearing and on perusal of impugned Award, the evidence on record and Supreme Court's decision in *Sarla Verma (Supra)*, I find that the manner of taking place of accident in question is clearly depicted in Claimant-Injured's initial version given to police, on basis of which, FIR regarding this accident was registered. The initial version put forth by Claimant-Injured, as contained in Exhibit-PX, clearly shows that when Claimant-Injured was in the process of getting down from the bus in question, his bags were stuck in the door and the bus driver drove away the bus, due to which he fell down and had sustained grievous injuries on his leg. Pertinently, this version does not get diluted in the cross-examination. It is relevant to note that the so-called version of bus-conductor is not on record and has not been put to Claimant-Injured and

so, on its basis, no inference of contributory negligence can be raised. There is no site plan of the spot on record. Apart from self-serving statement of bus driver, there is no tangible evidence on record to impute any contributory negligence to Claimant-Injured.

It is reiterated by Supreme Court in *National Insurance Company Limited v. Sinitha & Others*, (2012) 2 SCC 356 that onus to prove contributory negligence remains on insurer/owner of vehicle in question. In the instant case, owner-RSRTC has failed to discharge its onus. So, argument of owner-RSRTC's counsel of contributory negligence is negated. Negligence of bus driver is quite apparent and so, Tribunal's finding on this aspect is affirmed.

As regards application of multiplier, I find that Claimant-Injured was aged 40 years as per his age given in the ration card and in view of Supreme Court's decision in *Sarla Verma (Supra)*, applicable multiplier for the age group of 36 to 40 years is 15. The Tribunal has erred in applying the multiplier of 16. By applying multiplier of 15, the 'loss of earning capacity' due to injuries suffered is re-assessed as under:-

$$₹3200/- \text{ p.m.} \times 12 \times 15 \times 80/100 = ₹4,60,800/-$$

Accordingly, the compensation granted under this head by the Tribunal is reduced from ₹4,92,000/- to ₹4,60,800/-.

So far as compensation granted under the non-pecuniary heads is concerned, I find that the compensation of ₹35,000/- granted under the head of '*pain and suffering*' is on the lower side. Supreme Court in

Sanjay Kumar Vs. Ashok Kumar and Another, (2014) 5 SCC 330, while dealing with the case of an Embroiderer, who had suffered 70% permanent disability, has granted compensation of ₹1,50,000/- under the head of '*mental agony, pain and suffering*' in relation to an accident which took place in September, 2005. Supreme Court in *Sanjay Kumar (supra)* has also granted compensation of ₹1lac for '*loss of amenities of life*' whereas the Tribunal in the impugned Award has not granted any compensation under this head. Accordingly, compensation of ₹1lac under the head '*loss of amenities of life*', is granted to the Claimant-Injured and compensation under the head of '*pain and suffering*' is enhanced from ₹35,000/- to ₹1,50,000/-.

Although there is un-rebutted evidence on record that Claimant-Injured requires a sum of ₹2,35,000/- for obtaining artificial limb, the learned Tribunal has erred in not granting any compensation for obtaining an artificial limb. In view of the Estimate (*EX PW 1/24*), for obtaining artificial limb, compensation of ₹2,35,000/- is granted to Claimant-Injured to obtain the artificial limb.

In the light of the aforesaid, the compensation payable to Claimant-Injured is re-assessed as under:-

<i>Loss of income</i>	₹25,600/-
<i>Loss of earning capacity due to disability</i>	₹4,60,800/-
<i>Medicines and medical</i>	₹2,42,000/-

<i>treatment</i>	
<i>Pain and sufferings</i>	₹1,50,000/-
<i>Loss of amenities</i>	₹1,00,000/-
<i>Cost of artificial limb</i>	₹2,35,000/-
<i>Conveyance and special diet</i>	₹14,000/-
Total	₹12,27,400/-

Consequently, the enhanced compensation of ₹12,27,400/- shall carry interest @ 9% p.a. from the date of filing of the claim petition till the date of deposit/realization in view of Supreme Court's decision in *Shivakumar M. Vs. Managing Director, BMTC* 2017 SCC Online SC 148. Owner-RSRTC is granted six weeks' time to deposit the enhanced compensation of ₹4,18,800/- with interest @ 9% p.a. as well as the differential interest, in the Bank Account of Claimant-Injured with UCO Bank, Delhi High Court Branch, New Delhi. Thereafter, the deposited amount be released to Claimant-Injured in the manner indicated in the impugned Award. By way of abundant caution, the concerned Bank Manager shall insist upon personal appearance of Claimant-Injured and thereafter only, release the deposited amount and if anything is found amiss, then it shall be brought to the notice of this Court.

Statutory deposit, if any, be refunded to owner-RSRTC, as per Rules.

With aforesaid directions, the above captioned appeals are disposed of while modifying the impugned Award in terms indicated above.

(SUNIL GAUR)
JUDGE

APRIL 12, 2017

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