

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

Date of Decision: September 11, 2018

+ **MAC.APP. 444/2013**

MOHD SABEER @ SHABIR HUSSAIN Appellant
Through: Mr. O.P. Mannie, Advocate

versus

SH SHYAM BABU AWASTHI & ANR Respondents
Through: Ms. Garima Prashad and Mr.
Shadab Khan, Advocates for
respondent No.2

+ **MAC.APP. 558/2013**

U P STATE ROAD TRANSPORT CORPORATION Appellant
Through: Ms. Garima Prashad and Mr.
Shadab Khan, Advocates

versus

MOHD SABEER @ SHABIR HUSSAIN Respondent
Through: Mr. O.P. Mannie, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 8th February, 2013 grants compensation of ₹15,76,465/- with interest @7.5% *per annum* to Injured-Mohd. Sabeer, aged 37 years, on account of grievous injuries suffered by him in a vehicular accident, which took place in the intervening night of 12th & 13th June, 2009.

2. In the above captioned first appeal, *Mohd. Sabeer (hereinafter*

referred to as 'Injured') seeks enhancement in the quantum of compensation, whereas in the above captioned second appeal, exoneration from paying the awarded compensation is sought by the owner of bus in question. Since both the appeals arise out of common impugned judgment, therefore, with the consent of learned counsel for the parties, both the appeals have been heard together and are being decided by this common judgment.

3. The factual background of this case, as noticed in the impugned Award, is as under:-

"It is stated in this claim petition that in the midnight of 12.06.2009 and 13.06.2009, the petitioner was traveling in a bus bearing No.UP-25T-9664 as he was proceeding towards his resident at Delhi from his native place at Noor Pur, Gajrola via Ghaziabad.

It is stated that the driver of the bus was driving the same in a rash and negligent manner without caring for the safety of passengers traveling in the bus.

At about 12:30 a.m., when the bus reached at Road near Jindal Pipe Factory, Ghaziabad, the driver of the bus hit a standing tempo which was out of order and was standing on the extreme left side of the road.

As a result of this forceful accident, petitioner and other passengers traveling in the bus received serious injuries all over their bodies."

4. To render the impugned Award, Motor Accident Claims Tribunal (hereinafter referred to as 'the Tribunal') has relied upon evidence of Injured and as per Disability Certificate (Ex.P.Y.), the Injured had suffered permanent disability of 70% in relation to right lower limb. On

the strength of evidence recorded, impugned Award has been rendered. The breakup of compensation awarded by Tribunal is as under:-

<i>Cost of Artificial limb and its maintenance</i>	<i>₹5,70,000/- (₹5,20,000/- + ₹50,000/-)</i>
<i>Loss of future earning</i>	<i>₹6,09,345/-</i>
<i>Medical expenses</i>	<i>₹57,650/-</i>
<i>Attendant Charges</i>	<i>₹11,802/-</i>
<i>Conveyance</i>	<i>₹10,000/-</i>
<i>Special Diet</i>	<i>₹15,000/-</i>
<i>Pain and suffering</i>	<i>₹1,00,000/-</i>
<i>Loss of amenities of life</i>	<i>₹1,00,000/-</i>
<i>Loss due to disability and disfigurement</i>	<i>₹1,00,000/-</i>
<i>Total</i>	<i>₹15,76,465/-</i>

5. Learned counsel for owner of insured bus assails impugned Award on the ground that as per the evidence of Injured, the accident in question had taken place at about 12.30 a.m. in the night intervening 12th and 13th June, 2009, but as per the evidence of Conductor-Aviral Singh (R2W1), the accident in question had taken place at 1.45 a.m. with a Canter. It is pointed out that as per the medical record, the Injured was admitted in *Ganga Ram Hospital* on 12th June, 2009, at about 11 p.m. So, it is submitted that there is discrepancy regarding time of the accident. The discrepancy pointed out *inter se* the evidence of Injured (PW-4) and the Conductor (R2W1) is that the bus in question had collided with a stationery tempo due to rash and negligent driving of the bus driver, whereas as per the evidence of Conductor, the accident in question had taken place due to rash and negligent driving of the driver of the Canter. It is pointed out that the time of the accident in question is not indicated

in the FIR registered regarding this accident at the instance of brother of Injured after four days of the accident. Thus, it is submitted that the accident in question had not taken place due to any negligence on part of the bus driver.

6. On the quantum aspect, it is submitted by learned counsel for the owner of insured bus that the Injured was aged more than 45 years on the day of the accident and so, the applicable multiplier would be 14 and not 16, as has been applied by the Tribunal. It is further submitted that even if the age of Injured is taken to be 37 years, still the applicable multiplier would be of 15. It is also submitted that the Income Tax Returns (ITRs) of Injured relied upon by the Tribunal were filed after the accident in question and so, these ITRs cannot be relied upon. Thus, it is submitted that the income of Injured ought to have been assessed on minimum wages payable to an unskilled worker. It is also pointed out that there is no basis to quantify the '*future prospects*' and since the income of Injured as per the ITRs for the years 2008-09 and 2009-10 has increased and therefore, no addition towards '*future prospects*' ought to be made. Thus, it is submitted that the compensation granted to the Injured deserves to be reduced.

7. On the contrary, learned counsel for Injured refutes the aforesaid stand taken on behalf of owner of the bus in question and submits that the quantum of compensation granted is inadequate and it needs to be suitably enhanced. It is submitted that the '*conveyance expenses*' ought to be increased from ₹10,000/- to ₹50,000/- and addition of 40% towards '*future prospects*' ought to be made. It is also submitted on behalf of Injured that the interest payable on the awarded compensation ought to be

9% *per annum*. Thus, it is submitted that the compensation granted deserves to be suitably enhanced.

8. Upon hearing and on perusal of impugned Award and the evidence on record, I find that on the aspect of discrepancy in timing of the accident, there is no cross-examination of Injured and so, Insurer cannot be absolved from paying the compensation awarded. It is not the case of Conductor (R2W1) that the Injured was not travelling in the bus in question. Therefore, the Tribunal has rightly relied upon the evidence of Injured (PW-4) to hold that the negligence was of the bus driver in causing of the accident in question. The Tribunal has assessed the functional disability of Injured to be 30%. The permanent disability is 70% in relation to right lower limb. It is a case of amputation of right leg below the knee and so, the functional disability is assessed at 35%.

9. On the quantum aspect, I find that though there is '*loss of future earning*', but the '*earning capacity*' of the Injured has been certainly compromised. Income of the deceased has been assessed by the Tribunal on the basis of ITRs, which were filed after this accident, but there is no basis to conclude that the income of Injured was less than the one reflected in the ITRs for the year 2008-09. On this aspect also, there is no cross-examination of Injured. Therefore, in the facts of instant case, the Tribunal has rightly assessed the '*loss of earning capacity*' while taking the income of the Injured as reflected in the ITRs. The Tribunal has erred in applying the multiplier of 16. The applicable multiplier is of 15. As regards the age of Injured, there is no cross-examination of the Injured on this aspect. Therefore, the age of the Injured is taken to be 37 years, which would attract the multiplier of 15. ITRs relied upon by Injured

reveals that his income had increased despite the disability caused and so, it cannot be said that there is '*loss of future earning*'. While taking the income of Injured to be ₹1,26,947/-, his loss due to the Injuries suffered is assessed at ₹44,431.45/-, which is rounded off to ₹44,432/-. Accordingly, the '*loss of earning capacity*' of Injured is reassessed as under: -

$$₹44,432/- \times 15 = ₹6,66,480/-$$

10. The '*conveyance charges*' granted to Injured by the Tribunal appear to be on lower side and so, they are enhanced from ₹10,000/ to ₹50,000/-. Compensation granted to the Injured under other heads is found to be just and reasonable and is hence maintained. Consequentially, compensation payable to Injured is reassessed as under: -

<i>Cost of Artificial limb and its maintenance</i>	₹5,70,000/- (₹5,20,000/- + ₹50,000/-)
<i>Loss of earning capacity</i>	₹6,66,480/-
<i>Medical expenses</i>	₹57,650/-
<i>Attendant Charges</i>	₹11,802/-
<i>Conveyance</i>	₹50,000/-
<i>Special Diet</i>	₹15,000/-
<i>Pain and suffering</i>	₹1,00,000/-
<i>Loss of amenities of life</i>	₹1,00,000/-
<i>Loss due to disability and disfigurement</i>	₹1,00,000/-
Total	₹16,70,932 /-

11. In view of aforesaid, the compensation amount payable to Injured stands enhanced from ₹15,76,465/- to ₹16,70,932/-. The enhanced compensation be deposited by Insurer with the Tribunal within four weeks from today. As far as interest granted by the Tribunal is concerned, a Three Judge Bench of Supreme Court in a recent decision of *Jagdish v.*

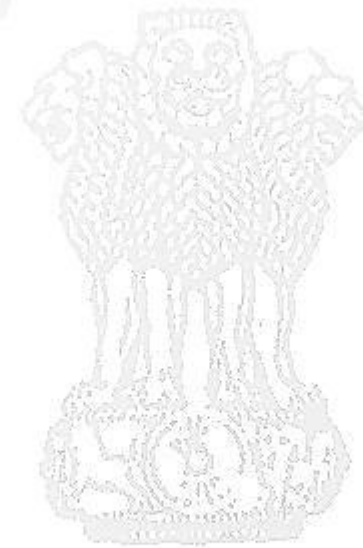
Mohan and Others, (2018) 4 SCC 571 has granted interest @ 9% *per annum* on the awarded compensation and so, in the instant case, it is directed that the re-assessed compensation shall carry interest @ 9% *per annum*. The modified compensation as per this judgment be released forthwith to Injured in the manner already indicated in the impugned Award. Statutory deposit, if any, be refunded to Insurer.

12. While modifying the impugned Award in the aforesaid terms, the above captioned appeals are disposed of.

**(SUNIL GAUR)
JUDGE**

SEPTEMBER 11, 2018

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