

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

Date of Decision: May 04, 2018

+ **MAC.APP. 406/2015 & CMs 8398/15, 15634/18**

RAJASTHAN STATE ROAD TRANSPORT CORPORATION &
ANR.Appellants

Through: Ms. Ritu Bhardwaj, Advocate

versus

GOLU KUMARRespondent

Through: Mr. Amit Kumar Pandey and Mr.
Nikhil Tripathi, Advocates

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 27th November, 2014 grants compensation of ₹14,74,241/- with interest @ 9% *per annum* to respondent-Golu Kumar, aged 17 years, who had sustained grievous injuries in a vehicular accident on 12th September 2012. The facts, as already noticed in the impugned Award, are under:

“On 12.09.2012 at around 22.15 hrs, the injured was coming from Noida to Delhi alongwith his cousin brother namely Anuj Kumar, in Mahindra Champion bearing no. DL-1L-N-4889, which was being driven by the driver of the brother of the petitioner, in accordance with the traffic rules and regulations at a normal speed. It is stated that the petitioner who was helper of the said vehicle was sitting besides the driver.

It is stated that as and when they reached near NAFED, near Ashram Flyover and were heading towards Lajpat Nagar, all of a sudden Rajasthan Roadways Bus bearing number RJ-05-PA-1298, being driven by R1 in rash and negligent manner, in contravention with the traffic rules hit the vehicle of the petitioner from the rare side. It is stated that due to forceful impact, vehicle of the petitioner turned over, resulting into multiple grievous injuries to the petitioner. It is stated that the injured was removed to Trauma Centre, AIIMS, New Delhi where his MLC was prepared. It is claimed that the accident has been caused due to rash and negligent driving of R1.”

2. The Motor Accident Claims Tribunal (SE-01), Saket Courts, New Delhi (*hereinafter referred as ‘the Tribunal’*) has relied upon evidence of mother of respondent-Injured (*who was minor at the time of this accident*) and the documents on record, to conclude that respondent-Injured had suffered 78% permanent disability in left lower limb. The Tribunal by applying minimum wages of an unskilled worker, has assessed the income of respondent-Injured at ₹7,251/- per month and has made addition of 50% towards ‘*future prospects*’. Effective ‘*loss of income*’ has been calculated at ₹5,439/- per month while assessing the functional disability to be 50%. The Tribunal by applying multiplier of 18 has assessed the ‘*loss of income/future income*’ at ₹11,74,824/- and has also granted ‘*medical expenses*’ of ₹29,417/-. A sum of ₹1.5 lacs has been awarded to respondent-Injured on account of ‘*pain and suffering*’ undergone by him due to this vehicular accident. ₹30,000/- has been granted to respondent-Injured as ‘*attendant charges*’ and ₹20,000/- towards ‘*conveyance*’

charges’ and another sum of ₹20,000/- has been granted under the head of *‘special diet’*. Compensation of ₹50,000/- has been awarded to respondent-Injured towards *‘loss of enjoyment of life’*. The breakup of compensation awarded by the Tribunal is as under:-

1	<i>Expenses towards treatment</i>	₹ 29,417/-
2	<i>Loss of future income on account of disability</i>	₹ 11,74,824/-
3	<i>Conveyance Charges</i>	₹ 20,000/-
4	<i>Special Diet</i>	₹ 20,000/-
5	<i>Pain and Suffering</i>	₹ 1,50,000/-
6	<i>Loss of enjoyment of life</i>	₹ 50,000/-
7	<i>Attendant charges</i>	₹ 30,000/-
Total		₹14,74,241/-

3. The challenge to impugned award by learned counsel for appellant is on the ground that there was no eye-witness and the evidence of driver of Tempo in which injured was travelling has not been recorded. Learned counsel for appellant contends that the tempo driver was driving the tempo in a zigzag manner and suddenly the Tempo came in front of the bus in question and so, no rash or negligent driving could be attributed to driver of bus in question. It is pointed out by appellants’ counsel that the Tempo driver was driving on the wrong side of the road. It is also submitted that the age proof of respondent-Injured is not on record.

4. Attention of this Court is drawn by appellants’ counsel to the interim order of 16th December, 2016 wherein it is noted that respondent-claimant, who had appeared before the Court, was limping, but he did not require any support to walk. Lastly, it is submitted on behalf of appellants

that the quantum of compensation granted is on higher side and it needs to be suitably reduced.

5. On the contrary, learned counsel for respondent-Injured supports the impugned Award and submits that the accident in question had taken place due to negligent driving of appellant's driver and that the quantum of compensation is granted is adequate and thus, no case for reduction of compensation is made out.

6. Upon hearing and on perusal of impugned Award and the evidence on record, I find that in the face of DAR, site plan of the spot (*Ex.PW1/12*) and mechanical inspection report of the vehicles involved in this accident, it cannot be said that the negligence in causing of the vehicular accident was of the Tempo driver. To controvert the DAR, the driver of appellant's bus ought to have stepped into the witness box. It has not been done. In the face of evidence on record, it stands sufficiently proved that the negligence was of appellant's bus driver in causing of the vehicular accident in question. In view of Disability Certificate (*Ex. PW-13*) and the observations made by this Court in the order of 16th December, 2016, I find that the functional disability has been rightly assessed to be 50%. The '*loss of income*' due to the disability suffered has been correctly assessed. Thus, quantum of compensation granted appears to be quite reasonable. In light of the evidence on record, I find that impugned Award does not suffer from any illegality or infirmity.

7. Consequentially, this appeal is dismissed being devoid of merit. The compensation be released in terms of impugned Award. Statutory deposit, if any, made by appellant be refunded to appellant, as per Rules.

8. The appeal and the pending applications are accordingly disposed of.

(SUNIL GAUR)
JUDGE

MAY 04, 2018

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