

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

% **Judgment delivered on: 26th February, 2019**

+ **MAC.APP. 181/2014**

BHAGWAT PRASAD

S/o Sh. Gokal Dev,

R/o H-5, 2nd Floor, Daveli, Delhi.

...Appellant

Through: **Mr. D. S. Bhandari,**
Advocate along with
Appellant in person.

versus

1. LAXMAN

S/o Bishan Singh

R/o Ni 71, Dugarpur Mohalla,
Johripur, Delhi.

2. IFFCO TOKIO GENERAL INSURANCE CO. LTD.

...Respondents

Through: **Mr. Pankaj Gupta,**
Advocate for Suman
Bagga, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. The instant appeal is arising from the impugned award dated 07.11.2013 in MACT Case No. 235/10 passed by Sh. Dinesh Bhatt, Presiding Officer, MACT-2 (Central), Tis Hazari Courts, Delhi (*henceforth referred to as the Tribunal*) whereby the Petitioner (Appellant herein) was awarded Rs. 1,46,572/- (*Rupees One Lakh*

Forty Six Thousand Five Hundred and Seventy Two Only) at 9% p.a. from the date of filing of DAR i.e. 13.05.2013 till the date of its realization.

2. The brief facts stated are that on 13.04.2013 Appellant Bhagwat Prasad was crossing the road towards Timarpur from Mal Road was hit by a motorcycle bearing Registration No. DL-6SAE-9502 (*hereinafter called the offending vehicle*) which was being driven by Respondent No.1 Laxman in rash and negligent manner. As a result of which he fell down on the road and sustained grievous injuries. He was taken to Sushruta Trauma Centre, 9, Metcalf Road, Delhi-110054 and was got admitted vide MLC No. 163171/13 from 13.04.2013 to 14.04.2013. Thereafter, he was taken to Indian Spinal Injuries Centre, Sector-C, Vasant Kunj, New Delhi- 110070, and remained there from 14.04.2013 to 19.04.2013. FIR No. 83/13 under Section 279/337 IPC was got registered at Police Station Timarpur, North Delhi.

3. Thereafter, DAR was filed on 13.05.2013 against the Respondent No.1, driver-cum-owner of the offending vehicle and Respondent No.2, Insurer of the offending vehicle.

4. Respondent No.1 has not filed written statement. However, Respondent No.2 Insurance Co. in its written statement took a defence that the offending vehicle was insured but driver of the offending vehicle, Laxman was not holding valid driving licence at the time of incident. Consequentially, Insurance Company is not liable to make any payment.

5. On the basis of the pleadings of the parties issues were framed on 05.08.2013 by the Ld. Tribunal.

6. In support of his claim petition, Petitioner filed his affidavit Ex.PW1/A and examined himself as PW1. Wherein he stated that on 13.04.2013 at about 07:15 PM while he was crossing the road towards Timarpur from Mal Road, got hit by a motorcycle driven by Respondent No.1 at very high speed in rash and negligent manner. As a result of which he fell down on the road and sustained grievous injuries. He relied upon the documents i.e. medical treatment records Ex.PW1/1, medical bills Ex.PW1/2 (colly.), copy of educational certificate Ex.PW1/4 and Copy of Aadhar Card Ex.PW1/5. Petitioner also examined Dr. Vinod Anand as PW2. Thereafter, petitioner's evidence was closed on 30.10.2013.

7. Respondent No.2 examined Sh. Vikas Mann as R2W1 who filed his affidavit Ex.R2W1/A in support of his claim and relied upon Insurance Policy Ex.R2W1/1. Thereafter, respondent's evidence was closed on 26.10.2013.

8. On the basis of pleadings and evidence led by the parties, impugned award was passed. Aggrieved from the award, appellant preferred to file present appeal.

9. Appellant has challenged the impugned Award on the following grounds: -

- i. Ld. Tribunal has not awarded any amount of compensation towards future loss of income due to disability.
- ii. Ld. Tribunal has not awarded any amount for the future treatment.
- iii. Ld. Tribunal has not awarded any compensation towards loss of amenities of life.

iv. Ld. Tribunal has not awarded any compensation towards disfigurement of the claimant.

10. Learned counsel for appellant has relied upon the following judgments:

- i. ***R.D. Hatangadi v. Pest Control (India) Pvt. Ltd***, I (1995) ACC 281.
- ii. ***Nagappa v. Gurudayal Singh and Ors.***, AIR 2003 SC 674.
- iii. ***Purushottam Dass v. New India Assurance Co. Ltd. & Ors.***, FAO 280/1995 decided on 08.04.2011.

11. Per contra, learned counsel for the Respondent No.2 argued that the compensation awarded by Ld. Tribunal is fair, just and reasonable and there is no ground for enhancement. Hence, present appeal deserves to be dismissed.

12. In the instant appeal, the incident took place on 13.04.2013 at about 7:15 PM due to rash and negligent act of offending vehicle, same is not challenged by appellant.

13. However, Appellant aggrieved from impugned award for not granting compensation towards loss of income due to disability has placed reliance on ***R.D. Hatangadi v. Pest Control (India) Pvt. Ltd*** (Supra).

In this regard, Appellant relied upon his disability certificate of 42% which is not a permanent disability and same makes him disentitled for compensation towards loss of income.

Reliance is placed on the judgment of the Apex Court in ***Raj Kumar v. Ajay Kumar & Anr.***, (2011) 1SCC 343.

The relevant extract of the judgment is reproduced as under:

“12. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

14. The plea of none granting of compensation towards future treatment in the award also loses its significance in absence of permanent disability on the part of the Appellant.

15. So far contention of the Appellant for not granting compensation towards future treatment is concerned, the disability is 42% which is temporary and not permanent.

Since, there is no permanent disability on the person of appellant and appellant is leading normal life. Consequently, he is not entitled for any compensation towards future treatment.

16. The plea of not awarding compensation towards loss of disfigurement is concerned, the same loses its significance, as, the injuries on the person is a temporary fracture as per the MLC No.163171/13. As such fracture on ankle is not permanent in nature and is curable. The same cannot be classified as disfigurement injury which could be a stigma in the society and a factor to lower down his position in the society. Therefore, Appellant is not entitled to any compensation towards disfigurement.

17. Reliance placed by the Appellant on ***R.D. Hatangadi*** (supra),

Nagappa (supra) and *Purushottam Dass* (supra) is misplaced.

18. As discussed above, there is no infirmity in the impugned award dated 07.11.2013 passed by Tribunal. Thus, the present appeal is accordingly dismissed and impugned award is upheld.

19. Let one copy of this judgment be sent to the concerned Court and Trial Court record be sent back. No order as to costs.

I.S.MEHTA
(JUDGE)

FEBRUARY 26, 2019