

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

% **Judgment delivered on: 16th January, 2019**

+ **MAC.APP. 805/2018 & CM APPLs. 36570/2018, 36572/2018**

UNITED INDIA INSURANCE CO. LTD. ...Appellant

Through: Mr. Animesh Sinha,
Advocate.

versus

VINOD KUMAR (INJURED)
S/o Chiranji Lal,
R/o 16/412, I-Block, Gali No.5,
Bapa Nagar, Pyare Lal Road
Karol Bagh, New Delhi. ...Respondent no.1

SHYAM SINGH (DRIVER)
S/o Sh. Lek Raj,
R/o 101, Village Budhpur
PO Alipur, Delhi-110036. ...Respondent no.2

DELHI TRANSPORT CO. (OWNER)
CW-1, K CAMP, B.B. Marg,
New Delhi. ... Respondent no.3

Through: Mr. Rahul Rohtagi,
Advocate.

CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. The appellant has challenged the award in MACT Case No.357903/16 dated 30.05.2018 passed by the Judge MACT-1 (Central), Tis Hazari Court, Delhi (*hereinafter called as "The Tribunal"*) whereby the compensation of Rs.20,54,000/- alongwith simple interest of 9% p.a. on the total compensation amount from the date of filing DAR till realization has been awarded to Respondent No.1/Claimant.

2. Facts in brief are that the Claimant on 19.03.2013 at about 1PM to 1:30 PM when he was crossing the road at Anand Parbat, near CNG pump, Military Road, New Delhi a DTC bus bearing registration No.DL-01-PC-7702 (*hereinafter called the offending vehicle*) being driven by driver Shyam Singh came at fast speed in a rash and negligent manner and hit the claimant-Vinod Kumar. Consequently, he fell down and front wheel of the bus ran over the left leg of claimant. Resultantly, his leg got crushed badly. He was taken to Lady Harding Medical College, Delhi and was admitted vide MLC No.38746/13. Thereafter, he was taken to Sir Ganga Ram Hospital on the same day. He remained there for one day. On 20.03.2013, he was shifted to RML Hospital from where he was discharged on 16.06.2013 after 58 days staying in hospital for the treatment. On 19.03.2013. FIR No. 42/13 under Section 279/338 IPC was registered at P.S. Anand Parbat, Delhi.

3. The claimant/Respondent No.1 has claimed that his left leg was imputed and he sustained 80% permanent disability in relation to his

left lower limb. The claimant further alleged that the offending vehicle DTC bus was registered in the name of Delhi Transport Corporation and the same was insured with United India Insurance Company Ltd. Therefore, the respondents are liable to pay the compensation.

4. The driver Respondent no.2 Shyam Singh and Respondent no.3 DTC has filed written statement and denied having any cause of action arisen in favour of the claimant and claimed that accident took place due to the negligence of the petitioner.

5. The Appellant herein United India Insurance Company Ltd. has offered a sum of Rs.101,100/- in its reply given as under: -

<i>“Compensation of pain & suffering</i>	<i>Rs.25,000/-</i>
<i>Compensation for special-diet.</i>	<i>Rs.10,000/-</i>
<i>Compensation for conveyance</i>	<i>Rs. 5,000/-</i>
<i>Compensation for medical treatment</i>	<i>Rs.39,500/-</i>
<i>Loss of pay for three month</i>	
<i>Minimum wages.</i>	<i>Rs.21,600/-</i>
<i>Total:</i>	<i>Rs. 1,01,100/- ”</i>

6. Since legal offer was not accepted by the petitioner, vide order dated 15.10.2013, following issues were framed: -

- i. Whether the injured had suffered grievous injuries in road traffic accident which took place on 19.03.2013 within the jurisdiction of P.S. Anand Parbat, Delhi due to rash and negligent driving of the vehicle bearing registration No. DL-1-PC-7702 by Respondent No.1?
- ii. Whether the petitioner is entitled to any compensation, if so, to what amount and from whom?
- iii. Relief.

7. In support of his claim, petitioner has examined himself as PW1 and he has also examined Kapil Kaushik as PW2, Rakesh Kumar as PW3, Record Clerk of RML Hospital, Pyara Singh as PW4 and Dr. S. Sinha as PW5.

8. Respondents have not led any evidence.

9. Aggrieved from the award dated 30.05.2018 passed by the Ld. Tribunal, appellant has preferred present appeal.

10. The appellant has challenged the impugned award on the following grounds: -

- i. The appellant in the instant appeal has pointed out that granting of Rs.6,26,800/- with interest is without basis.
- ii. The Tribunal has erroneously awarded amount of compensation separately for mental shock (Rs.1,00,000/-), pain and suffering (Rs.1,50,000/-), amenities (Rs. 75,000/-) and disfigurement (Rs.1,00,000/-) even when the different heads are similar.

11. Per contra, learned counsel of the Respondent No.1 has submitted that it is a case of permanent disability of 80% and same should be considered as 100%. On this point, Respondent No.1 has place reliance on the judgment of the Apex Court in ***Rekha Jain v. National Insurance*** and in ***Zakir Hussain v. Sabir*** and has further prays to enhance the compensation to the tune of Rs. 47,46,865/- with interest @ 12% p.a.

12. However, Respondent No.1 has not filed counter claim to this effect.

13. The claimant Vinod Kumar in his claim petition has claimed Rs.50,00,000/-. The claimant has examined himself as PW1 and in

support of his claim relied upon affidavit Ex.PW1/A in his Examination-in-Chief. He stated that he met with an accident on 19.03.2013 at about 1PM to 1:30 PM on Military Road, Near CNG pump, Anand Parbat, New Delhi. He was crossing the road, he saw a green color low floor DTC bus bearing No. DL-01-PC-7702 driven by Shyam Singh/Respondent no.2 (Driver) at fast speed in a rash and negligent manner and hit him with a great force. As a result of forceful hit he fell down on the road and his leg came under the front wheel of the offending DTC bus and his leg was badly crushed. The driver-Shyam Singh/Respondent no.2 of the offending vehicle ran away with the offending DTC bus from the spot. Thereafter, crowd gathered there and somebody from the crowd informed the police and he was taken to Lady Hardinge Medical College & Smt. Sucheta Kriplani Hospital and got admitted vide MLC No.38746/13 and shifted to Sir Ganga Ram Hospital, Delhi on the same day. He remained there for one day and incurred about Rs.36,067/- and the Bill is Ex.PW1/3.

On 20.03.2013, he was again shifted to Dr. Ram Manohar Lohia Hospital, Delhi and on 16.05.2013 he was discharge vide discharge slips Ex.PW1/2 and the Medical bill Ex.PW1/3.

The claimant was 42 year old at the time of the incident as per the Aadhaar Card Ex.PW1/1 and he was working as *karigar* of ladies footwear and was earning Rs.15,000/-pm.

Due to accident, he received 80% permanent disability as per the Disability Certificate Ex.PW5/1, which is issued by Orthopedics Handicapped Board of Dr. RML Hospital, New Delhi.

The estimate cost of artificial leg is Rs.3,13,400 Ex.PW1/5,

which was given by the Endolite Prosthetic & Orthotic Centre at Naraina, New Delhi.

FIR No.42/13 was registered under Section 279/388 at P.S. Anand Parbat, Delhi.

14. The claimant has examined Kapil Kaushik as PW2, who proved the Quotation Ex.PW1/4 of Endolite Trans Femoral System in respect of the claimant-Vinod Kumar. Claimant has also examined Rakesh Kumar as PW3, who has brought the medical record in respect of the claimant-Vinod Kumar from 20.03.2013 till 16.05.2013 and the same is Ex.PW3/1 (Colly. In 61 sheets). Pyara Singh as PW4, who has brought the medical treatment record of the claimant-Vinod Kumar and the same is ExPW4/1. Dr. S. Sinha as PW5, who has brought the record of Disability Certificate i.e. Ex.PW5/1.

15. The Delhi Transport Corporation/Respondent no.3 has not cross examined the claimant on the point that no accident with offending vehicle i.e. DTC bus bearing No. DL-01-PC-7702 has taken place. The statement of PW1, PW2, PW3, PW4 and PW5 proves the claim of the claimant/Respondent no.1 in absence of any evidence and any rebuttal.

16. What is emerging on record is that the claimant met with an accident with the offending vehicle on 19.03.2013 at about 1 PM to 1:30 PM, while he was crossing the road by foot on Military Road, near CNG pump, Anand Parbat, New Delhi a DTC bus bearing registration No. DL-01-PC-7702 being driven by driver-Shyam Singh came at fast speed in a rash and negligent manner and hit the claimant-Vinod Kumar. Consequently, he fell down and front wheel of the bus

ran over the left lower leg of the claimant. Resultantly, his leg got crushed badly and left lower limb was amputated due to the said accident.

17. It is admitted fact coming on record that the claimant-Vinod Kumar was 42 years old at the time of the incident and due to the said incident his position among friends, near relatives and society at large was lowered down for no fault of his.

18. It is further coming on record that without artificial limb the life of the claimant/Respondent No.1 cannot pull on smoothly. Therefore, using of the artificial limb is *sine qua non* to meet the daily needs of the nature, business activities and other social functions.

19. Using, just, one artificial limb is not enough, as it is very risky if the said artificial limb breaks down. Therefore, the alternative artificial limb is also required to meet the daily needs of the nature, and other functions if the primary artificial leg breaks down.

20. The amount granted by the Ld. Tribunal is reasonable and justifies the good cause to meet the needs of the claimant/Respondent No.1.

21. The amount of compensation for mental shock (Rs.1,00,000/-), pain and suffering (Rs.1,50,000/-), amenities (Rs. 75,000/-) and disfigurement (Rs.1,00,000/-) does not show any excess amount. Thus, the plea of the Appellant-Insurance Company is rejected and reliance is placed on judgment of this Court in ***Purshotam Dass v. New India Asso. Co. Ltd. and Ors.*** FAO No. 280/1995 decided on 08.04.2011.

22. Therefore, I find no infirmity with the impugned award passed

by the Tribunal. As such, the present appeal and applications are dismissed and impugned award is upheld. Awarded compensation converted to FDR, deposited with the Registrar General of this Court be released to the Claimant/Respondent No.1 herein on making proper application for the same and in manner as stated in the impugned award.

23. Let one copy of this judgment be sent to the concerned Court.
No order as to costs. LCR File be sent back.

JANUARY 16, 2019

I.S.MEHTA
(JUDGE)