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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 05.09.2023

+ **MAC.APP. 89/2023 & CM APPL. 7722/2023**

SANTOSH KUMAR

..... Appellant

Through: Mr.Pankaj Gupta, Adv.

versus

SH. MADAN AND OTHERS

..... Respondents

Through: Mr.Sanjay Rawat, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed by the Appellant/Claimant challenging the Award dated 03.01.2023 passed by the learned Motor Accidents Claims Tribunal-01 (Central-District), Tis Hazari Courts, Delhi (hereinafter referred to as the 'Tribunal') in MACT No. 431/2020, titled *Sh.Santosh Kumar v. Sh.Madan & Ors..*

2. By the Impugned Award the Appellant/claimant has been held entitled to compensation of a sum of Rs.1,63,500/- (One Lakh Sixty Three Thousand and Five Hundred only) along with interest at the rate of 6% per annum from the date of filing of the Detailed Accident Report (in short, for 'DAR'), that is, 01.10.2020.

3. The above Claim Petition was registered on the DAR filed on 01.10.2020, which *inter alia* reported that on

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23.08.2020 at about 9:30 AM, the appellant herein was going to his duty on his bicycle. When he reached between the Metro Pillar No.214 and 215, Patel Road, Delhi, all of a sudden, a Delhi Transport Corporation Bus bearing registration no. DL-1PD-5074 (hereinafter referred to as the 'Offending Vehicle') driven by the driver, who is the Respondent no.1 herein, in a rash and negligent manner, hit the bicycle, as a result of which the appellant fell down and sustained injuries. He was thereafter shifted to Sardar Vallabh Bhai Patel Hospital, Delhi from where he was later shifted to the All India Institute of Medical Sciences Trauma Center, New Delhi.

4. The nature of injuries suffered by the appellant and the period of his hospitalisation as a result of the accident, have been described by the learned Tribunal as under:-

“(22) Now coming to the aspect of injuries caused to the Petitioner Santosh Kumar and the Disability, if any, suffered by him. I have gone through the MLC of the petitioner Santosh Kumar which forms a part of the DAR Ex.PW1/B-86. A perusal of the MLC shows that the injured Santosh Kumar was brought to Jai Prakash Narayan Apex Center, AIIMS, New Delhi on 23.08.2020 at 11:37:41 hours by one Pintu with alleged history of Road Traffic Accident on 23.08.2020 at 9:30 AM near Patel Nagar Delhi, Patient was on bicycle hit with Bus, Patient was taken to nearby Sardar Vallabh Patel Hospital and then brought to AIIMS Trauma center by relatives. There was an abrasion over right elbow joint and sutured wound over right temporal head. The Discharge Summary which is Ex.PW1B-26 shows that the injured was admitted on 02.09.2020 and was discharged on 08.09.2020 and as per the NCCT Head Report there was a contusion on left temporal.

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The copies of other Discharge Summaries which are Mark A show that the petitioner also remained admitted w.e.f. 26.07.2021 till 29.07.2021 since he was diagnosed with Left Decompressive Craniectomy and was admitted for Cranioplasty. The said Discharge Summary show that the petitioner was operated on 27.06.2021. The injuries sustained by the petitioner have been opined to be Grievous in Nature to which there is no dispute. However, there is nothing on record to show that the petitioner had suffered any kind of disability on account of the injuries sustained by him.”

5. The learned Tribunal has held that as the petitioner has been unable to prove any permanent disability suffered by him due to the accident, he shall *inter alia* be entitled to the loss of income only for the period of his treatment, that is, four months.

6. The learned counsel for the appellant submits that the appellant had filed an application in October 2021 for the appellant to be referred to the AIIMS Trauma Centre, New Delhi for medical examination for determination of permanent disability, if any, suffered by him. The said application, however, was dismissed by the learned Tribunal vide order dated 20.10.2022, holding that the appellant could have availed services of the platform provided by the Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India in the form of website ‘Swavlamban’, that is, swavlambancard.gov.in. The learned counsel for the appellant submits that the appellant cannot be prejudiced merely because he was not advised to



avail the services of the above website for obtaining the permanent disability certificate.

7. On the other hand, the learned counsel for the respondent no.3 submits that no fault can be found in the Impugned Award. He submits that it was for the appellant to prove the nature and extent of permanent disability, if any, suffered by him as a result of the accident. He submits that even otherwise, if this Court is to grant another opportunity to the appellant to obtain and produce a certificate with respect to his claim of permanent disability, the respondent no.3 should not be burdened with the liability to pay interest for the period of delay.

8. I have considered the submissions made by the learned counsels for the parties.

9. The nature of injury suffered by the appellant and the period of his hospitalisation as a result of the accident, has been described hereinabove. The appellant had filed an application before the learned Tribunal praying that he be referred to a Medical Board, to be appointed by AIIMS Trauma Centre, for the assessment of his permanent disability. The said application came to be dismissed by the order dated 20.10.2022 passed by the learned Tribunal, observing as under:-

“.....At this stage, I may note that an application filed by the petitioner seeking directions to the Medical Superintendent for issuance of Disability, is pending disposal. I may observe that the main counsel for the petitioner has not appeared to pursue the said application and only a proxy counsel has appeared. Now, at this stage, Sh. R.S. Ray Advocate has appeared for the petitioner. When the Ld. Counsel has been asked to argue



on the application, he seems to have forgotten that he has moved any such application before this Court/ Tribunal. I may also note that from the physical appearance of the petitioner he does not appear to have suffered any disability. Even otherwise, the Government of India has already provided a platform for applying the disability on the official website of Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India 'Swavlamban' i.e. swavlambancard.gov.in. Instead of availing of the said services, it was open for the petitioner to have applied for the disability, if any on the webportal which he has failed to do. The attempt of the petitioner is only to delay the conclusion of present proceedings. This being the background, the application is hereby Dismissed....."

10. It must be remembered that the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') is a social beneficial legislation aimed at granting relief to the victims of injury/death suffered due to an accident involving a motor vehicle. It must be liberally construed. In fact, for the purposes of Section 166 of the Act, the learned Tribunal is charged with a duty to carry out an 'inquiry', and not a 'trial' on a claim made by the claimants. The Tribunal is further charged with a duty to award compensation as may be 'just' in favour of the claimant. The Tribunal should not be bound by the technicality or by procedure.

11. In ***Vimla Devi & Ors. v. National Insurance Co. Ltd. & Anr.***, (2019) 2 SCC 186, the Supreme Court has re-emphasized the object of the Act as under :-



“15. At the outset, we may reiterate as has been consistently said by this Court in a series of cases that the Act is a beneficial piece of legislation enacted to give solace to the victims of the motor accident who suffer bodily injury or die untimely. The Act is designed in a manner, which relieves the victims from ensuring strict compliance provided in law, which are otherwise applicable to the suits and other proceedings while prosecuting the claim petition filed under the Act for claiming compensation for the loss sustained by them in the accident.”

12. In ***Sunita and Ors v. Rajasthan State Road Transport Corporation and Ors***, (2020) 13 SCC 486, the Supreme Court re-emphasized that the Tribunal/Court should not adopt a hyper technical and trivial approach in case of compensation under the Act. It was held that the Tribunal in *stricto sensu* is not bound by the pleadings of the parties; its function is to determine the amount of fair compensation. The Court held as under:-

“22. It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal’s role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties.....”

13. Though it may be true that the appellant herein could have applied for obtaining a permanent disability certificate through the website of the Government of India, however, the claim of the appellant cannot be scuttled or denied only for this default. The appellant had been advised to move an application

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before the learned Tribunal for the said purpose. The appellant clearly relied upon the legal advice received by him. The learned Tribunal has, in my view, taken a hyper technical view in dismissing the application filed by the appellant, vide its Impugned Order dated 20.10.2022, thereby resulting in miscarriage of justice.

14. At the same time, in spite of the dismissal of the application, the appellant took no steps to obtain a permanent disability certificate in accordance with the procedure prescribed by the Government of India, till the passing of the Impugned Award. The appellant, therefore, cannot place all the blame on his counsel or on the Tribunal and make the insurance company to pay interest for this period of delay.

15. To meet the ends of justice, the present appeal is disposed of with the following directions :-

- a) The Medical Superintendent of the Department of Anaesthesia and Critical Care, Jai Prakash Narayan Apex Trauma Centre, AIIMS, New Delhi-110029, is requested to appoint a Board of Doctors to make an assessment of the permanent disability, if any, suffered by the appellant herein as a result of the accident in question;
- b) The appellant shall produce himself before the Medical Board, so constituted, on 21.09.2023 at 11:00 AM.;
- c) On the examination of the appellant by the Medical Board, a copy of the Disability Certificate shall be



supplied to the appellant as also to the learned Tribunal hearing the Claim Petition, by the Medical Superintendent, within a period of four weeks of such examination.

16. The Impugned Award dated 03.01.2023 is set aside. The Claim Petition is restored back to its original number. In the Claim Petition, the appellant shall be entitled to rely upon the Disability Certificate issued by the AIIMS Trauma Centre.

17. All grounds are left open to the parties to be raised before the learned Tribunal for determination.

18. After hearing the parties, the learned Tribunal shall re-compute the compensation payable to the appellant.

19. To balance the equities, it is made clear that the appellant shall not be entitled to interest on any enhancement, if any, granted in his favour pursuant to the present remand, for the period between 20.10.2022 till the filing of the appeal, that is, till 01.03.2023.

20. The parties shall appear before the learned Tribunal on 6th November, 2023.

21. The appeal and the application are disposed of in the above terms.

22. A copy of this order be also sent to the Medical Superintendent, AIIMS Trauma Centre, New Delhi for ensuring compliance.

NAVIN CHAWLA, J

SEPTEMBER 5, 2023/rv/ss