



2024-2002-2000



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

% **Judgment reserved on : 14 February, 2024**
Judgment pronounced on : 08 April 2024

+ **MAC. APPL. 384/2014**

MADAN LAL

..... Appellant

Through: **Mr. J.S. Lamba, Adv.**

versus

RAJ KUMAR & ORS.

..... Respondent

Through: **None**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The instant appeal has been filed by the claimant/appellant in terms of Section 173 of the Motor Vehicles Act, 1988¹ assailing the impugned judgment-cum-award dated 16.09.2013 passed by the learned ADJ, Presiding Officer, Motor Accident Claims Tribunal, Karkardooma Courts, New Delhi² in MACT No. 144/11³ titled 'Madan Lal vs. Raj Kumar', whereby the learned Tribunal allowed the claim petition and awarded a sum of Rs.1,69,919/- as compensation along with interest @ 7.5% per annum to the claimant and fastened the liability on the Insurance Company to pay the compensation.

¹ The Act

² Tribunal

³ Claim petition



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FACTUAL BACKGROUND:

2. Briefly stated, it was the case of the claimant that on 16.02.2011 at about 6:15 PM, the injured/claimant/Madan Lal Grover was going back from his shop situated at Vasundhara Enclave, Delhi to his house at Krishna Nagar, Delhi, along with one boy namely Aslam, on his Two-Wheeler Scooter bearing registration No. DL-7SAB-0551, which was being driven by the injured himself. When the appellant/injured reached near Gas Godown, DDA Flats, Chilla, Mayur Vihar-I, Delhi, a Santro Car (hereinafter referred to as the 'offending vehicle') bearing registration No. DL-2CAE-8714, being driven in a rash and negligent manner by one namely Raj Kumar/respondent No.1 i.e. the driver⁴ of the offending vehicle, came at a high speed and hit the injured from the back side due to which the injured along with the pillion rider/Aslam, fell down on the road and as a result, the appellant sustained grievous injuries all over his body and a fracture on his right shoulder. Subsequently, the PCR was informed and the police reached on the spot and the injured was taken to LBS hospital and a FIR bearing No. 49/2011 was registered under Section 279/338 of the Indian Penal Code, 1860⁵ at PS Mayur Vihar against the respondent No.1/driver.

3. During the course of proceedings, respondent Nos.1 and 2, who are the driver and the registered owner⁶ of the offending vehicle

⁴ Section 2(9) "driver" includes, in relation to a motor vehicle which is drawn by another motor vehicle, the person who acts as a steersman of the drawn vehicle

⁵ IPC

⁶ Section 2(30) "owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which



respectively, controverted the allegations stating that the vehicle was not at all involved in the said accident. It was further averred that as the vehicle was duly insured with respondent No.3/Insurance Company, the liability to pay the compensation is upon them.

4. *Per Contra*, the insurance company stated that the offending vehicle was falsely implicated in the present case and the injured himself stated in the FIR that he was hit by an unknown vehicle, the registration number of which could not be noted down. Lastly, it was alleged that there was a breach of the terms and conditions of the insurance policy and the driver did not possess a valid Driving Licence⁷.

PROCEEDINGS BEFORE THE LEARNED TRIBUNAL AND THE IMPUGNED ORDER:

5. Based on the pleadings, the following issues were framed by the learned Tribunal:

- “(i) Whether petitioner sustained injuries due to rash and negligent driving of involved vehicle i.e. Santro Car bearing No. DL-2CAE-8714 by R-1? OPP
- (ii) Whether the petitioner is entitled to any compensation, if so, from whom and of what amount?
- (iii) Relief ”

6. Regarding issue No.1, the learned Tribunal *vide* paragraph (17) and (18) of the impugned judgment-cum-award was of the view that the testimony of PW-1/Madan Lal finds corroboration from the fact

is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement.

⁷ Section 2(10) “driving licence” means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description.



that he was immediately taken to a hospital for treatment. Further, the criminal case record shows that the Investigating Officer (IO) got the offending vehicle mechanically inspected. A site plan was also prepared regarding the accident. Considering all these documents and the statement of PW-1, it was proven that the accident indeed took place and the injured suffered grievous injuries. Lastly, the learned Tribunal held that respondent Nos. 1 and 2 failed to place on record any documentary evidence so as to show that the accident had not taken place due to rash and negligent driving of the driver. Thus, the issue was decided in favour of the injured/petitioner and against the respondents. It would be expedient to reproduce the relevant observations in this regard, which read as under:

“17. The testimony of PW.1 is further corroborated with the fact that injured was immediately taken to LBS Hospital again suggests that petitioner received injuries due to said accident and was taken to hospital for receiving treatment. His testimony is further corroborated by the criminal case record as the IO of this case got the offending vehicle mechanically inspected. He also prepared site plan showing the place of accident, seized the documents belonging to the offending vehicle in possession. All these documents and the statement of PW1 clearly suggests that the accident has taken place and injured received injuries in the said accident.

18. On the other hand R1 and R2 both failed to place an iota of evidence showing thereby that the accident has not taken place due to rash and negligent Act of R1.”

7. As regards the quantum of compensation, since evidence was brought, that expenses were incurred by the petitioner for his medical treatment to the tune of Rs.5340/-, the same was allowed. Further, the learned Tribunal noted that the injuries have resulted in permanent



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physical disability to the extent of 24% in relation to left upper limb as per the Disability Certificate (Ex. PW1/A) and in this regard, it relied upon the provisions of Second Schedule Clause (5) and (6) of The Act. Eventually, the learned Tribunal, after taking into consideration the submissions made by the insurance company, assessed the functional disability with respect to the whole body @ 12%.

8. As there was no documentary evidence on record so as to show that the injured was running a paint shop and a hardware shop in Delhi and there was no evidence for any other source of income as well, the learned Tribunal assessed the income of the claimant at Rs. 6,084 per month as per the minimum wages for an unskilled worker prevalent in the state at the time of the accident. As the injured was above 60 years of age at the time of the accident and applying the multiplier of '7', the loss of future income was assessed at Rs. 61,327/-. The relevant observations by the learned Tribunal in this regard has been reproduced hereunder:

“25. On the issue of assessing future damages Ld. counsel for insurance company submitted that the nature of injuries was opined as grievous which has been resulted into permanent disability @ 24% towards left upper limb which should have been considered as 12 % towards whole body. On the other hand Ld. counsel for petitioner submitted that the nature of injury in the present case is grievous in left upper limb and in such circumstances the functional disability is to be taken as 24% as has been opined in the permanent disability certificate Ex. PW1/A towards whole body.

26. In view of the rival contentions of Ld. counsel for both the parties and on considering the nature of injuries discussed above coupled with the fact that petitioner received grievous injuries in the left upper limb, I am of the view that petitioner has become entitled for seeking future losses to the tune of 12% functional disability towards whole body.



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27. In assessing the future income of the petitioner his age and his income both are the relevant facts. To prove his age he placed an election identity card showing the age of petitioner/injured as 57 years as on 1.1.2008. The accident has taken place on 16/02/2011, therefore, the age of the injured is to be considered as more than 60 years on the day of accident, therefore, for the purpose of assessing the future loss the multiplier of 7 would be applicable.

28. Admittedly petitioner failed to prove that he was running a paint and hardware shop at Vasundhara Enclave and also failed to prove other source of income. In such circumstances income of the petitioner is to be assessed on the basis of minimum wages chart prevalent on the date of accident being unskilled worker which comes to Rs. 6,084/-. By applying the multiplier of 7 the loss of future income would come to Rs. 6084 X 7 X 12 X 12/100 = 61,327/-."

9. In conclusion, the learned Tribunal granted a sum of Rs. 1,69,919/- as compensation to the claimant, which is depicted hereunder:

Sl.No.	On Account of	Amount (Rs.)
1	Towards medical expenses.	Rs.5,340/-
2	Towards three months salary	Rs.18,252/-
3	Towards future loss of income	Rs.61,327/-
4	Towards better diet	Rs.15,000/-
5	Towards conveyance	Rs.15,000/-
6	Towards attendant	Rs.15,000/-
7	Towards pain and suffering	Rs.40,000/-
	Total	Rs. 1,69,919/-

GROUND FOR APPEAL:

10. The impugned judgment-cum-award has been assailed by the claimant/appellant *inter alia* on the grounds that the learned Tribunal erred in applying the multiplier of '7' while calculating the loss of income. Further, the interest @ 7.5% awarded by the learned Tribunal is on a lower side considering the inflation rate as per the Reserve Bank of India. Lastly, it was contested by the appellant that the learned Tribunal ought to have considered the permanent disability @



24% instead of 12% considering the nature of injuries sustained by the claimant.

ANALYSIS AND DECISION:

11. Having heard the learned counsels for the appellant/claimant and learned counsel for the respondent No.3/Insurance Company and on perusal of the record, I have no hesitation in holding that the quantum of compensation awarded by the learned Tribunal is not just and fair.

12. Having regard to the permanent disability to the extent of 24% suffered by the appellant/injured/claimant in relation to the left upper limb, the quantum compensation towards pain and suffering of Rs. 40,000/- awarded by the learned Tribunal is the lower side. Thus, the same is enhanced to Rs. 1,00,000/-. Further, no compensation has been awarded towards loss of enjoyment of amenities of life, which is awarded to the extent of Rs. 1,00,000/-.

13. Further, considering that the injured/claimant was about 60 years of age and his bodily integrity has been compromised, he would certainly require at least one attendant, which is reckoned at the moderate stage of Rs. 6,000/- per month, which would annually come to Rs. 72,000/- and applying the multiplier of '7', the same would come to Rs. 5,04,000/-. Reference can be invited to the decision in the case of **Abhimanyu Pratap Singh v. Namita Sekhon**⁸ wherein, the Supreme Court observed that the multiplier method should be followed not only for determination of the future loss of earning, but

⁸ (2022) 8 SCC 489



also for assessing the attendant charges and accordingly, enhanced the amount under the said head. The germane observations have been reproduced below:

The High Court in the impugned order [*Abhimanyu Partap Singh v. Namita Sekhon*, 2019 SCC OnLine P&H 6271] observed that the claimant has now started practice as an advocate, therefore, future loss of earning has been calculated only for 10 years, applying the multiplier of 16, without looking to the facts that the claimant cannot perform the work of advocacy similar to the other advocates by attending the cases in different courts. The attendant charges have been allowed only for 20 years with one attendant. **In fact, not only for determination of future loss of earning but for attendant charges also the multiplier method should be followed.** (paragraph 16)

The multiplier method has been recognised as most realistic and reasonable because it has been decided looking to the age, inflation rate, uncertainty of life and other realistic needs. Thus, for determination of just compensation to ensure justice with the family of the deceased or the injured as the case may be the compensation can be determined applying the said method. **Therefore, in our view the Tribunal while granting the compensation of future loss as well as earning only for 10 years and attendant charges only for 20 years was not justified. In fact, the said amount should be determined applying the multiplier method.** (paragraph 17)

{bold portions emphasized}

14. In another case **Kajal v. Jagdish Chand**⁹, the apex court held as under:

The attendant charges have been awarded by the High Court @ Rs 2500 per month for 44 years, which works out to Rs 13,20,000. Unfortunately, this system is not a proper system. Multiplier system is used to balance out various factors. When compensation is awarded in lump sum, various factors are taken into consideration. When compensation is paid in lump sum, this Court has always followed the multiplier system. **The multiplier system should be followed not only for determining the compensation**

⁹ 2020 4 SCC 413



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on account of loss of income but also for determining the attendant charges, etc. This system was recognised by this Court in *Gobald Motor Service Ltd. v. R.M.K. Veluswami* [*Gobald Motor Service Ltd. v. R.M.K. Veluswami*, AIR 1962 SC 1]. The multiplier system factors in the inflation rate, the rate of interest payable on the lump sum award, the longevity of the claimant, and also other issues such as the uncertainties of life. Out of all the various alternative methods, the multiplier method has been recognised as the most realistic and reasonable method. It ensures better justice between the parties and thus results in award of “just compensation” within the meaning of the Act.

(paragraph 22)

{bold portions emphasized}

15. There is no gainsaying that the multiplier of 7 would be reckoned in terms of the decision in the case of **Sarla Verma v. DTC**¹⁰.

16. Insofar as the compensation towards future loss of income or functional disability is concerned, it cannot be said that the injured/claimant at the age of 60 years was not suitable for any kind of employment or occupation. In a given scenario where the longevity of life has increased in our country, it is fair to assume that even at the age of 60 years, one would involve himself in some occupation or the other so as to earn his livelihood and ensure his well-being.

17. The learned Tribunal in the absence of a final, cogent and reliable documentary evidence, has assumed the notional income of the injured/claimant as per the scales of minimum wages applicable for an unskilled workman @ Rs. 6,084. Again, it needs to be appreciated that the scales of minimum wages are just one indicator so as to assume the notional income, but with age and experience, it may

¹⁰ (2009) 6 SCC 121



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also be possible for a person to fetch more than the minimum wages. Reference can be invited to a decision of this court in the case of **National Insurance Co. Ltd. v. Hema Devi**¹¹ wherein this court observed:

“The scales of the minimum wages are not having any rational with the age of the worker concerned and same is only taken as an indicator so as to assume the notional income but, there can be no hard-and-fast rule that such scales of minimum wages would be applicable to a workman of every age. It is, but common sense that with age and experience, even a workman starts getting more than what is said as the ‘minimum wages’ by virtue of law.” (paragraph 16)

18. In another decision of this court **HDFC ERGO General Insurance Co. Ltd. v. Seema**¹², it was reiterated that:

“What the learned Trial Court has done is that in the absence of any tangible evidence on record, it assumed that the notional income of the deceased could be reckoned in terms of the minimum wages for an unskilled workman applicable in Delhi and thereby assessed monthly income @ Rs.7,098/-. There is no gainsaying that the scales of minimum wages that are provided for various categories of workmen are such that do not have a correlation with the age, experience and competency of the individual concerned. (paragraph 20)

At the cost of repetition, in the face of the fact that the deceased was maintaining her four daughters, it would be reasonable to assume that she in all probabilities was earning and spending something more than the minimum wages so as to provide for a comfortable living and well-being of herself and her daughters, and therefore, bearing in mind the state of the social and economic conditions prevalent in the year 2011, it would be fair to assume that she would be earning at least a minimum amount of Rs.10,000/- p.m.” (paragraph 21)

¹¹ 2024 SCC OnLine Del 1464

¹² 2024 SCC OnLine Del 1797



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19. Therefore, it would be appropriate to assume that the injured/claimant was earning about Rs. 12,000/- per month, which would annually come to Rs. 1,44,000/-. There is committed no jurisdictional error by the learned Tribunal in assuming the functional disability @ 12%. Therefore, taking the functional disability @ 12% and applying the multiplier of '7', the loss of future income would come to Rs. 1,20,960/-. Accordingly, the compensation is worked out as under: -

Sl.No.	On Account of	Amount (Rs.)
1.	Annual Income	Rs. 1,44,000/- (12,000 x 12)
2.	Multiplier	7
	Total loss of future income (with 12% disability)	Rs. 1,20,960/- (1,44,000 x 7 x 12/100)
3.	Towards medical expenses	Rs. 5,340/-
4.	Towards three months salary	Rs. 18,252/-
5.	Towards better diet	Rs. 25,000/-
6.	Towards conveyance charges	Rs. 25,000/-
7.	Towards attendant charges	Rs. 5,04,000/-
8.	Towards pain and suffering	Rs. 1,00,000/-
9.	Towards Loss of enjoyment of amenities of life	Rs. 1,00,000/-
	Total	Rs. 8,98,552/-

20. Lastly, there is no merit in the plea by the injured/claimant that the interest awarded @ 7.5% is on the lower side. This Court has taken a consistent view that ordinarily, the interest rate would be 7.5%. Reference can be invited to a decision of this court in the case of **The Oriental Insurance Co. Ltd. v. Sohan Lal**¹³ wherein, this

¹³ 2024 SCC OnLine Del 1966



court referring to the case of **National Insurance Co. Ltd. v. Yad Ram**¹⁴ observed as under:

“Ultimately, the learned Single Judge also had the occasion to observe that no fixed rate of interest on compensation can be applied under the M.V. Act and the grant of appropriate rate of interest shall be governed by several factors which are to be determined on a case-to-case basis. In the instant case, the motor vehicle accident had occurred on 01.07.2018 and the claim petition was filed on 30.08.2018. The award was passed within 05 years from date of filing of claim petition, i.e., on 03.07.2023. Considering that perhaps due to the Covid-19 pandemic situation that brought the world to a standstill, the adjudication took a long time, this would be a fit case where the rate of interest should be brought down to the accepted norms set up by this Court at 7.5% p.a. The award of compensation in the nature of interest at the rate of 7.5% p.a. would also commensurate with the rate of interests which are being given by the nationalised banks on Fixed Deposit Receipts as per Reserve Bank of India guidelines.” (paragraph 7)

21. In view of the foregoing discussions, the present appeal is allowed. The appellant is awarded a total compensation of Rs. 8,98,552 (Rupees Eight Lacs Ninety Eight Thousand Five Hundred Fifty Two Only) @ 7.5% from the date of filing of the appeal till realization. The amount of compensation with accrued interest be deposited with the learned Tribunal within four weeks from today failing which, the respondent No.3/Insurance Company shall be liable to pay interest @ 12% per annum from the date of this judgment till realization. On deposit of the amount of compensation with interest, the same be released to the appellant/injured/claimant in terms of the directions passed by the learned Tribunal. Further, 40% of the amount of compensation may be released to the appellant/injured/claimant

¹⁴ 2023 SCC OnLine Del 1849



while the balance amount be kept in a Fixed Deposit with a nationalized bank for a period of five years. However, the appellant/injured/claimant shall be entitled to realize the annual interest on Fixed Deposit till the date of its maturity.

22. The present appeal is disposed of.

DHARMESH SHARMA, J.

APRIL 08, 2024/ck