



2023:DHC:9078



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

% Reserved on : 07th December, 2023
Pronounced on : 18th December, 2023

+ **MAC.APP. 418/2014 & CM APPL. 2902/2021.**

SMT GEETA Appellant

Through: Mr. V.K. Vashistha, Advocate.

versus

MOHD JAMALUDDIN & ORS Respondent

Through: Ms. Hetu Arora Sethi, Ms. Saumya
Tandon and Mr. Arjun Basra,
Advocates.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL
JUDGMENT

ANISH DAYAL, J.

1. This appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 (“**the Act**”) assailing the impugned judgment dated 14th May 2012 passed by the Presiding Officer, MACT, East District, Karkardooma, Delhi (“**MACT**”) in MAC Petition No. 438/2006 titled “***Smt. Geeta v. Mohd. Jamaluddin & Ors***”.

2. The appellant/claimant, on 19th July 2005 at about 11:45 P.M., along with her mother hired a three-seater auto rikshaw (“**TSR**”) from Metro Hospital to their residence. As per the appellant, the driver was driving the said TSR in rash and negligent manner and when they reached NH-24 near

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Akshardham Mandir, Delhi, the TSR hit a stationed bus. As a result of which, it turned turtle and all three occupants suffered injuries. Injuries to the appellant included fractures on her left leg, right shoulder, right hip, crush injury on right thigh and multiple injuries on all over her body. She was taken to Lal Bahadur Shastri Hospital (“**LBS Hospital**”) in a critical condition and thereafter to GTB Hospital for further treatment.

3. A criminal case was registered vide FIR No. 365/05 under Sections 279/337/338 of the Indian Penal Code, 1860 at P.S. Pandav Nagar against respondent No.3.

4. Petition was filed by the appellant under Section 166 & 140 of the Motor Vehicle Act, 1998, against the owner of the TSR, Mohd. Jamaluddin (respondent No.1), the Insurance Company (respondent No.2), and the driver of the TSR, Shyam Singh (Respondent No.3). At that time the appellant was about 25 years old, engaged in a private job and earning Rs. 5,000/- per month. She claimed that the accident had taken place due to rash and negligent driving of the TSR by respondent No.3. The claim was for joint and separate liability on respondent No.1, respondent No. 2, and respondent No. 3 for Rs 10 Lakhs with interest and also for interim compensation. Respondent No.1 failed to appear before the MACT and was proceeded *ex parte*.

5. Respondent No. 2 & 3 filed written statements. Respondent No. 2 took the preliminary objection that he was not liable to indemnify as the driver of the offending vehicle was not holding any licence at the time of accident and this was mentioned in the charge-sheet, which was filed pursuant to the FIR.



6. Respondent No.3 took the objection that the accident had taken place due to rash and negligent driving of another truck which came from behind and hit his vehicle at high speed. Therefore, he collided with the standing bus and himself received multiple injuries in the said accident. He stated that he had a valid driving licence, the vehicle was duly insured and therefore the insurance company was duly liable.

7. Issues were framed by the MACT on whether injuries were due to rash and negligent driving and whether the claimant was entitled to any compensation.

8. Claimant examined herself as PW-1 and supplied copies of the treatment and medical expenses as well as the copy of the disability certificate, a photograph of the injured and other documents. She stated that she was in employment with Shri Anil Bhatnagar and was earning Rs.5,000/- per month. Mother of the appellant, Smt. Omvati, deposed as PW-2 and corroborated the testimony of PW-1.

9. Shri Ashish Bhatnagar deposed as PW-3 and confirmed that the petitioner was working with him as a domestic servant and a copy of the ITR assessments for those years was also filed. However, in the cross-examination, he could not produce any appointment letter issued to the claimant and no document to confirm that she was given payment of Rs.5,000/-.

10. The orthopaedic specialist from LBS Hospital deposed as PW-4, and stated that the injured had suffered 71% permanent disability in relation to



her left lower limb and it was a case of “non-union segmental fracture tibia left with stiff ankle and knee” and a case of non-progressive recovery.

11. Authorised representatives of the insurance company testified regarding the original insurance policy as also stated that the vehicle bearing No. DL-1RC-7228 was insured in the name of the respondent No.1 and they had issued notice under Order 12 Rule 8 CPC through their counsel to the driver and owner of the vehicle directing them to produce the driving licence and original insurance policy, but the documents have not been produced.

12. The investigator for insurance company appeared as R2W2 and deposed that verification was carried out from the office of RTO, Agra, of the driving licence issued allegedly in the name of respondent No.3. It was found that no requisite fee had been deposited and therefore the driving licence would be deemed to be fake. His report was exhibited as Ex. R2W2/4.

13. MACT pursuant to appreciation of evidence on record, trusted and believed the testimony of PW-1, corroborated by statements narrated in the FIR, and concluded that the incident had occurred due to rash and negligent driving of the offending vehicle bearing No. DL-1RC-7228 driven by respondent No.3.

14. As regards the compensation, the following was granted:

S. No	On Account of	Amount (Rs.)
1.	Towards medical expenses	Rs. 1,75,519/-
2.	Towards loss of future income	Rs. 3,94,502/-



3.	Towards attendant	Rs. 10,000/-
4.	Towards conveyance and better diet	Rs. 30,000/-
5.	Towards income for four months @ Rs.3044x4 = 12,176/-	Rs. 12,176/-
6.	Towards pain and suffering	Rs.35,000/-
	Total	Rs. 6,57,197/-

15. This appeal was filed *inter alia* on the following grounds:

- (i) MACT had not considered the fact that the appellant was earning Rs. 5,000/- per month as a domestic servant. Merely on the basis that there was no proof of the income, instead granted Rs. 3,044/- per month as minimum wages of an unskilled worker. Considering that there could be no proof for amounts being paid to a domestic worker, the appellant contended that her monthly income was unnecessarily reduced to minimum wages, even while her employer Shri Ashish Bhatnagar had deposed in her favour.
- (ii) The MACT erred in considering the 71% permanent disability, as certified by the Medical Board to amount to 40% functional disability towards the full body, since the appellant was working as a domestic servant. It was contended that this was despite the medical assessment having been proved through the testimony of the orthopaedic specialist, as well as the fact that the disability was certified to be non-progressive. Further, she was working as domestic servant, it would



have been more prudent to consider a functional disability as 100%. Besides CM APPL. 2902/2021 was filed by the appellant to place on record a copy of the disability certificate dated 26th December, 2019 issued by LBS Hospital and a photograph showing the amputation of appellant's left leg below the knee. It was pled that the said records were necessary to prove that the disability of the appellant increased over a period of time, and she also suffered amputation in the left leg below knee due to the accident. Consequently, there was increased medical expenses due to the disability and it ought to be taken in account in the assessment of the appeal. The said application was opposed by counsel for the respondent on the basis that a subsequent disability certificate could not be admitted at the stage of appeal. Further, an assessment by the MACT was on the basis of the disability certificate produced at that point of time and shows the injuries as being non-progressive. Considering the appeal had been languishing since 2014 (about 10 years), this Court did not consider it necessary to go into the merits of the application, since the appeal itself was being disposed of, on the facts as they existed and were before the MACT.

- (iii) Interest granted as 7.5 % per annum, the total compensation of Rs. 6,57,197/- was abysmally low and should be granted at 9% as per the decision of Hon'ble Supreme Court in *Anjali v. Lokendra Rathod*, 2022 SCC OnLine SC 1683.
- (iv) Further, an amount of Rs. 35,000/- granted towards pain and suffering, as granted by the MACT, ought to be enhanced in consonance with the decision of the Hon'ble Supreme Court in *Abhimanyu Pratap Singh*



v Namita Sekhon & Anr, (2022) 8 SCC 489, whereas a sum of Rs. 4,00,000/- was granted on the loss of amenities of life, marital bliss, pain and suffering, loss of enjoyment and loss of expectancy.

16. Counsel for the respondent submitted as under:

- (i) The issue of minimum wages as awarded by the MACT was correct, as decided by the Hon'ble Supreme Court in *Chandra alias Chanda alias Chandraram and Anr. v. Mukesh Kumar Yadav* (2022) 1 SCC 198, particularly since there was no proof of the wages of Rs. 5000/- as claimed by the appellant. Counsel for the respondent also relied upon the decision in *Manusha Sreekumar and Others v. United India Insurance Co. Ltd.* 2022 SCC OnLine SC 1441, wherein it was held that in the absence of documentary evidence, the minimum wage notification for computation of income, along with some guesswork is required.
- (ii) As regards functional disability, respondent No. 2 submitted that disability was non-progressive and had been assessed at 71% by the Medical Board and therefore the question of payment of 100% did not arise. As regards the disability certificate dated 26th December, 2019, produced by the appellant through an application to file additional evidence, they may not have any bearing in the matter since the impugned award was of 2012 and the appeal was filed in 2014 when no such evidence was presented nor any amputation as alleged was pleaded. Moreover, the accident had occurred in 2005 and the



disability certificate was of 2008 and therefore even after 3 years, the disability could not have been more than what had been certified.

- (iii) As regards the loss of amenities, on the facts in *Abhimanyu Pratap Singh* (supra), the disability was 100% permanent disability and therefore, quantum of non-pecuniary damages would have to be distinguished from this case.
- (iv) Interest at 7.5% was stated to be appropriate in the period when it was granted and the decision of the Hon'ble Supreme Court could not lay down a standard rule which could be applied in this case as well.

Analysis

17. This Court has perused the documents and assessed the contention of the parties. The assessment by this Court is as under:

- (i) MACT had not accepted the testimony of the appellant that she was earning Rs. 5000/- per month as a domestic servant, despite her employer Shri Ashish Bhatnagar having deposed in her favour and corroborated the same, as PW3. Merely because in his cross-examination, he could not produce an appointment letter and a document to confirm that she was given payment of Rs. 5000/-, MACT granted her minimum wages only. In the opinion of this Court, a domestic servant will be paid in cash and there will be no documentation either on the side of the employer or the employee for receipt of such wages. Payment of Rs. 5000/- per month for a domestic servant at that time would be a reasonable figure from all points of



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view. Further, the appellant/injured had taken pains to produce her employer as a witness, who categorically stated in her testimony that she indeed had been working as a domestic servant since 2004, and after her accident she had not come to work. In his cross-examination, he stated that he did not have any receipt of the payment of Rs. 5000/- but denied the suggestion that he had not paid the said amount to her. Further, he had placed on record his income tax returns stating that he was an income tax payee. Further, he did state, in his cross, that the news of the accident of the appellant had been received by him through a telephone call made by the appellant's mother and that his own mother had gone to see the appellant after the accident in LBS Hospital. On perusal of testimony, this Court is of the view that the MACT erred in not accepting the corroboration by PW-3 of the employment of the appellant as a domestic servant with him and that she was being paid Rs. 5000/- since his testimony was rather specific, not vague and gave attendant facts as well. The requirement of proof even in situations where there are unskilled workers are paid in cash, cannot work to the prejudice of the claimant.

- (ii) The reliance of the respondent on the decision in *Chandra alias Chanda alias Chandraram* (supra) does not come to their aid. In fact, in that decision the Hon'ble Supreme Court has stated that the minimum wage notification can be a yardstick but cannot be absolute to fix the income of the deceased, and that some guesswork is required to be done. The Hon'ble Supreme Court further states:



“Merely because the claimants were unable to produce documentary evidence to show monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income.”

In this view of the matter, the compensation granted for 4 months at minimum wage, is accordingly enhanced to compensation for 4 months at Rs. 5000/- per month, considering her 71% permanent disability.

- (iii) As regards functional disability, principles of assessment are well laid out in the decision in ***Raj Kumar v. Ajay Kumar***, (2011) 1 SCC 343, where the Hon'ble Supreme Court has laid down guidelines and steps in order to determine the functional disability. In this case the disability arising from the fact that she had suffered fracture on left leg, right shoulder, right thigh and multiple injuries on her body was assessed at 71%. It had been stated by PW-4 in the testimony that it was a case of non-progressive recovery. Considering that she was a domestic servant which involves multiple nature of chores and requires the proper functioning of all motor activity of the body, this Court is of the view that functional disability ought to have been assessed at higher percentage considering that her injuries were on the leg, shoulder, hip and the thigh, involving a large part of body anatomy, would certainly curtail her functionality. This assessment of 60% would be more appropriate in the circumstances. Even though the application for the disability certificate of 2019, has not been adjudicated by this Court, judicial notice has taken of the fact that her recovery is more towards



the negative rather than the positive. Reference is also made to the observations made by the Hon'ble Supreme Court in **Raj Kumar** (*supra*), where it is stated that:

“14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred per cent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of “loss of future earnings”, if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not be found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity.”



- (iv) As regards award of interest @ 7.5 %, this Court approves what has been granted by the MACT considering that this has remained the average rate of interest which has been prevalent for this period of time. Accordingly, the compensation is recalculated as under, based on the directions given above.
- (v) As regards non- pecuniary damages awarded, it has been stated by the Hon'ble Supreme Court in *Sidram v. United India Insurance Co. Ltd.*, (2023) 3 SCC 439, that aspects relating to grant of damages of pain and suffering should take into account the appellant's age (which was 25 years old) at that time, the unusual deprivation (considering the disability) and the effect on life (her inability to carry a proper functional life), it would be appropriate to enhance this amount to Rs. 75,000/-. The demand of the appellant that it should be in line with the decision in *Abhimanyu Pratap Singh* (supra) may not be strictly correct since in that case it was 100% permanent disability, as also that this Court has already awarded enhancement of the income as well as the percentage of functional disability to her benefit.

S.No.	On Account of	Award by MACT	Assessment by High Court
1.	Towards medical expenses	Rs. 1,75,519/-	Rs. 1,75,519/-
2.	Towards loss of future income	Rs. 3,94,502/-	Rs. 6,48,000/- (5000 X 12 X 18 X 0.6)
3.	Towards attendant	Rs. 10,000/-	Rs. 10,000/-



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4.	Towards conveyance and better diet	Rs. 30,000/-	Rs. 30,000/-
5.	Towards income for four months	Rs. 12,176/-	Rs. 20,000/- (5,000 X4)
6.	Towards pain and suffering	Rs. 35,000/-	Rs. 75,000/-
	Total	Rs. 6,57,197/-	Rs.9,58,519/-

18. In view of the aforesaid facts and circumstances, the impugned judgement is liable to be modified as above and the claimant is held entitled to be awarded compensation to the tune of **Rs. 9,68,519/-** along with 7.5% interest per annum from the date of making the application.

19. Accordingly, the appeal stands allowed and disposed of in above terms.

20. Order be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

DECEMBER 18, 2023/RK

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