



2023:DHC:8831



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

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Reserved on: 22nd November, 2023

Pronounced on: 04th December, 2023

+ **MAC.APP. 402/2014**

SABHAPATI

..... Appellant

Through: Mr. D. Rajeshwar Rao, Ajeet Kumar
&Mr. Chirag Mittal, Advocates.

versus

SANDEEP GAHLOT & OTHERS

..... Respondents

Through: Mr. Pankaj Seth, Advocate for R-3
(through video conferencing).

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This petition has been filed under section 173 of the Motor Vehicles Act, 1988 ("MV Act") seeking enhancement of compensation in addition to what has been awarded *vide* impugned judgment and order dated 21st May, 2023 passed by the Ld. Presiding Officer, MACT-2, (South-West & Airport), Dwarka, New Delhi in case No. 42/DAR/12.

2. The appellant was injured in an accident on 24th August, 2011. At the time of accident, he was standing in a queue for making his UID card when at about 4:30 a.m. the offending car (bearing registration No. DL 5CC 6835) being driven by respondent no.1 in rash and negligent manner, came at a



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high speed and hit the appellant and others, who were standing there in the queue. A police case being FIR No.288 dated 24.08.2011 under sections 279/338 IPC was registered at PS Dabri. The offending vehicle was found to be under the ownership of respondent no.1 and insured with respondent no.3.

3. As per the claim of the appellant, he was 50 years old at the time of the accident and was working at a stationery shop, earning Rs.8,000/- per month and was the sole bread earner of the family. He sustained grievous injuries i.e. fracture of patella bone of the left knee besides other injuries. The appellant was taken to DDU Hospital and remained there from 28.8.2011 till 01.09.2011; he underwent an operation during his hospitalisation and treatment continued with the OPD thereafter.

4. As per the appellant, he has been disabled permanently on account of injuries sustained and as per the medical examination done by the Medical Board of the DDU Hospital, his physical disability has been assessed at 29% on account of stiffness in the left knee.

5. Respondent nos. 1 and 2 did not file their written statement before the Ld. MACT. Respondent no.3, the insurer, filed its written statement admitting the fact of insurance. Issues were framed relating to fact of the accident and the amount of compensation that the claimant would be entitled to.

6. The appellant was examined as PW-1 being the eyewitness. However, he was not cross examined by respondent no.1, who chose not to lead any evidence.

7. Issue no.1 as regards the factum of the accident being caused by the respondent no.1 on account of his rash and negligent driving was therefore



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proven in favour of the appellant. As regards issue no.2 of compensation, Ld. MACT relying upon the decision of the Hon'ble Supreme Court in ***Raj Kumar v. Ajay Kumar & Anr.***, (2011) 1 SCC 343 awarded a total compensation of Rs.2,12,007/- along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till its realisation. The components of the same are tabulated as under:

S. No.	Component of Compensation	Amount awarded
1.	Pain and Suffering	35,000/-
2.	Cost of treatment	3,061/-
3.	Loss of wages (6,422 x 3 months)	19,266/-
4.	Attendant's charges	19,266/-
5.	Loss of wages in future (multiplier 11 as 50Y)	1,22,914/-
6.	Special Diet	7,500/-
7.	Conveyance charges	5,000/-
	Total	2,12,007/-

8. Learned counsel for the appellant has canvassed three grounds in their challenge to the impugned award, seeking enhancement:

- a. Despite the disability certificate stating 29% disability in relation to left lower limb, the Ld. MACT held that the functional disability *qua* the entire body of the appellant could not be slated at 29%, and rather was assessed to be at 14.5%.



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This, as per the appellant's counsel ought to have been atleast assessed at 29%. It was contended that by reducing the disability of the appellant by 50% despite considering the nature of work done by the appellant of working in a shop, was neither justified nor reasonable.

- b. Future prospects relating to his loss of earning was not taken into account. Appellant's counsel contended that considering the age of the appellant was 50 years, at least 10% ought to have been considered by the Ld. MACT. The income of the appellant was considered at Rs. 6,422/- per month without any future increase, which was irrational and not logical.
- c. Ld. MACT did not allow any compensation for non-pecuniary damages i.e. loss of amenities, disfigurement, disability, loss of movement and loss of enjoyment of life. A compensation of Rs.35,000/- was given towards pain and suffering and other non pecuniary heads like conveyance and special diet. Considering the age of the appellant, it is contended that he faced much hardship in life and ought to have been compensated.

9. Learned counsel for respondent no.3, the insurer, refuted these contentions and submitted as under:

- a. As regards functional disability, the assessment is always in relation to the entire body and functionality of the injured and cannot be simply equated to the assessment of disability as per the medical board. These are 2 different standards as evident



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from the observations of the Hon'ble Supreme Court in ***Raj Kumar*** (supra).

- b. As regards future prospects, learned counsel relied upon decision of the Hon'ble Supreme Court in ***National Insurance Company Limited v. Pranay Sethi & Ors.***, (2017) 16 SCC 680 to contend that once the multiplier had been applied, it would cover the aspect of future prospects and was not to be separately accounted for.
- c. As regards the issue of loss of amenities, the learned counsel contended that the non-pecuniary compensation awarded was clearly as per the standard prevailing at that time and cannot be judged on current standards which would obviously be much more than what was prevalent in 2011/2013.

10. Having considered the respective submissions of the learned counsel for the parties and having perused the documents which form part of the record before the Ld. MACT, this Court's view and analysis is as under:

10.1 *Firstly*, as regards the disability certificate, it was certified by the senior medical officers of the orthopaedic department of the DDU Hospital dated 26.12.2012 wherein it was stated that the appellant was suffering from "post traumatic operated fracture patella left side with stiff knee with permanent physical disability of 29% in relation to left lower limb" and that "disability is permanent in nature". There is no other evidence on record except for PW-1, the injured appellant himself who had stated in his affidavit that he was unable to do his work properly. Further, the senior resident of the orthopaedic department was examined as PW-2 to prove the disability certificate. There was no cross examination of either of the witnesses.



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10.2 Hon'ble Supreme Court, in **Raj Kumar** (supra), has laid down the principles relating to assessment of functional disability; relevant paragraph is extracted hereunder:

“12. Therefore, the Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence:

(i) whether the disablement is permanent or temporary;

(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;

(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person.

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.

13. *Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is*



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totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.”

10.3 Ld. MACT has to ascertain functional disability on the basis of the three steps, as stated by the Hon’ble Supreme Court.

10.4 It would also be relevant to rely upon the Hon’ble Supreme Court’s observations in ***Rekha Jain v. National Insurance Company Limited and Others***, (2013) 8 SCC 389, wherein it was observed:

“28. This Court is required to keep in mind justice, equity and good conscience which must be the primary, relevant and important aspects for awarding just and reasonable compensation to an unfortunate victim, the appellant herein who has sustained grievous injuries to her body and whose future prospects are completely doomed. Further, the Tribunal and the courts while awarding compensation for bodily injuries, must realise that the possession of one’s own body is the first and most valuable of all human rights and that all other possessions and ownership are the extensions of the basic right. Bodily injuries should be equated with the deprivation which entitles a claimant to damages and the amount of damages varies in accordance with the gravity of injuries.

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57. In this regard, in Baker case [Baker v. Willoughby, 1970 AC 467: (1970) 2 WLR 50: (1969) 3 All ER 1528 (HL)], it has been stated by Lord Reid that a man is not compensated for the physical injury; he is compensated for the loss which he suffers as a result of that injury. Therefore, the functional disability is



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a forceful alteration of career option of the appellant who has already undergone physical and mental injuries because of the accident. It would amount to adding distress to injury if one is forced to work with difficulty to earn his/her livelihood so as to reduce the burden of the wrongdoer in terms of compensation.”

10.5 Considering that the permanent disability, as certified by the doctors, was of the left knee it would follow that the appellant would be hampered in doing work which requires standing for a reasonable amount of hours or carrying weight or lifting anything from ground above. His mobility would, therefore, be severely restricted in these circumstances. There is no assessment which has been given by the Ld. MACT in this regard and mere 14.5% without any rationale has been awarded.

10.6 Considering that the appellant was a shopkeeper and would require a reasonable amount of mobility in order to carry on his avocation of selling stationery, for lack of any other evidence on record and considering that the disability was permanent and it was relating to the left knee, it would be apposite to assess the functional disability as 20%.

10.7 *Secondly*, as regards addition of future prospects, it would be apposite to rely upon the decision of the Hon’ble Supreme Court in **Sarla Verma & Ors. v. DTC & Anr.**, (2009) 6 SCC 121 where it has been stated as under in para 24:-

“24. The assumption of the appellants that the actual future pay revisions should be taken into account for the purpose of calculating the income is not sound. As against the contention of the appellants that if the deceased had been alive, he would have earned the benefit of revised pay scales, it is equally possible that if he had not died in the accident, he might have died on account of ill health or other accident, or lost the employment or met some other calamity or disadvantage. The imponderables in life are too many. Another significant aspect



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is the non-existence of such evidence at the time of accident. In this case, the accident and death occurred in the year 1988. The award was made by the Tribunal in the year 1993. The High Court decided the appeal in 2007. The pendency of the claim proceedings and appeal for nearly two decades is a fortuitous circumstance and that will not entitle the appellants to rely upon the two pay revisions which took place in the course of the said two decades. If the claim petition filed in 1988 had been disposed of in the year 1988-89 itself and if the appeal had been decided by the High Court in the year 1989-90, then obviously the compensation would have been decided only with reference to the scale of pay applicable at the time of death and not with reference to any future revision in pay scales. If the contention urged by the claimants is accepted, it would lead to the following situation: The claimants only could rely upon the pay scales in force at the time of the accident, if they are prompt in conducting the case. But if they delay the proceedings, they can rely upon the revised higher pay scales that may come into effect during such pendency. Surely, promptness cannot be punished in this manner. We therefore reject the contention that the revisions in pay scale subsequent to the death and before the final hearing should be taken note of for the purpose of determining the income for calculating the compensation.

10.8 According to the Hon'ble Supreme Court, where the age of the victim is more than 50 years, there would be no addition for future prospects. However, in a subsequent opinion in **Pranay Sethi** (supra), Hon'ble Supreme Court has stated as under:

“59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.



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59.4. *In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.”*

10.9 Accordingly, the plea of the appellant that 10% ought to be added to the income of the appellant from his work as a shopkeeper, is therefore acceptable and is accordingly granted.

10.10 *Thirdly*, the Hon’ble Supreme Court has observed as under in ***R.D. Hattangadi v. Pest Control (India) (P) Ltd.***, (1995) 1 SCC 551 at para 9 thereof which is extracted hereunder for ease of reference:

“9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on



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account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.”

10.11 In this context it is noted that the Ld. MACT has given Rs.35,000/- only towards non pecuniary damages for pain and suffering and no other component has been considered like loss of amenities of life, loss of expectation, inconvenience, hardship, discomfort, disappointment and frustration. The appellant in his affidavit has stated that he has suffered financial crisis, mental pain and agony as well he had to remain away from his job for more than 8 months and due to his injuries, he is not able to do his work properly. Moreover, his family members had to take care and look after him keeping away from their regular work and household jobs. Accordingly, it would be apposite and reasonable to consider some additional amount towards these components and therefore, an amount of Rs.50,000/- shall be added to the compensation granted to him towards the inconvenience, hardship and discomfort caused to him and his family.

11. All the above additional components to the compensation shall be payable to him from the date of filing of the claim petition along with interest @ 7.5% per annum till realization.

S. No.	Component of Compensation	Amount awarded
1.	Pain and Suffering	35,000/-
2.	Inconvenience, hardship, and discomfort	50,000/-
3.	Cost of treatment	3,061/-



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4.	Loss of wages (6,422 x 3 months)	19,266/-
5.	Attendant's charges	19,266/-
6.	Loss of wages in future (6422 + 10%) X12X11 X 20%	1,86,494.88/-
7.	Special Diet	7,500/-
8.	Conveyance charges	5,000/-
	Total	3,25,587.88/-

12. 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 **3,25,587.88/-** along with 7.5% interest per annum from the date of making the application.

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

14. Judgment/Order be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

DECEMBER 04, 2023/sm