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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 14.09.2023

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MAC.APP. 582/2017 & CM APPL. 24248/2017

U P STATE ROAD TRANSPORT CORPORATION

..... Appellant

Through: Mr.Shadab Khan, Adv.

versus

SAHAJANAND & ANR.

..... Respondents

Through: Mr.Shekhar Aggarwal, Adv. for
R-1.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed challenging the Award dated 10.03.2017 passed by the learned Motor Accidents Claims Tribunal, Shahadara, Karkardooma Court, Delhi (hereinafter referred to as the 'Tribunal') in MACT No. 285/2014, titled ***Sahajanand v. Arvind Kumar & Anr..***

2. It was the case of the claimant/respondent no.1 herein that on 21.06.2014 at about 3:50 AM, he was going on foot, and when he reached Hapur Mor, Chowki Tela Bhatta, Police Station Kotwali, Ghaziabad, Uttar Pradesh (in short 'UP'), the offending vehicle, that is, the bus bearing no. UP-14BT-2016, being driven by the respondent no.2 herein in a rash and negligent manner and at a high speed, hit the respondent no.1, as a result of which he fell down and sustained grievous injuries in his right leg. As a result of the accident, he had to suffer



amputation of his right leg below the knee. His permanent disability was assessed at 60%.

3. The appellant challenges the Impugned Award on the following grounds:

- I. that the learned Tribunal has erred in not attributing any contributory negligence on the claimant/respondent no.1 herein;
- II. that the assessment of functional disability of the respondent no. 1 made by the learned Tribunal is incorrect; and,
- III. that the rate of interest awarded is excessive.

Contributory negligence:

4. The appellant challenges the Impugned Award contending that the learned Tribunal has failed to appreciate that the accident had taken place at a spot where there was no zebra crossing for a pedestrian. Placing reliance on the evidence of respondent no.2 herein, that is, the driver of the offending vehicle, the learned counsel for the appellant submits that the driver had clearly stated that he was driving the vehicle, abiding by all the rules and regulations of traffic, when suddenly the claimant/respondent no.1 came near the bus. The respondent no.2 further stated that he tried his level best to stop the bus, however, the same hit the respondent no.1. The learned counsel for the appellant submits that, therefore, the learned Tribunal should have attributed contributory negligence on the respondent no.1.



5. He also draws my attention to the site plan prepared by the police to show that the accident took place when the bus was turning right while coming from the side of Hapur under a flyover. He submits that clearly the respondent no.1 should not have been crossing the road at that spot.

6. On the other hand, the learned counsel for the respondent no.1 submits that the manner in which the accident took place was described by the respondent no.1 herein, who appeared as PW-1 before the learned Tribunal. He was not cross-examined by the appellant or respondent no.2 on the same and, therefore, now the appellant cannot be allowed to challenge the manner in which the accident took place.

7. I am in agreement with the submission made by the learned counsel for the respondent no.1. The respondent no.1 in his statement had clearly stated that the accident had taken place when he was going on foot and was hit by the offending vehicle being driven in a rash and negligent manner and at a very high speed while it was coming from the Hapur side. He was not cross-examined by the appellant or by respondent no.2 on this aspect. It was also not put to him that there was no zebra crossing at the spot of the accident. This was not even the case of the respondent no.2 in his evidence. The appellant is now placing reliance on the site plan to contend that there was no zebra crossing at the spot of the accident. However, the site plan alone cannot be considered to be evidence of the same.

8. Even otherwise, the offending vehicle was taking a right turn from under the flyover. It was supposed to be, therefore,



plying at a less speed. The very fact that the respondent no.2 herein could not stop the bus in spite of him seeing the respondent no.1 indicates that the offending vehicle was being driven in a rash and negligent manner. I, therefore, find no merit in the challenge of the appellant on this account.

Functional Disability:

9. The next challenge of the appellant to the Impugned Award is on the functional disability of the respondent no.1 assessed by the learned Tribunal.

10. The learned counsel for the appellant submits that the permanent disability suffered by the respondent no.1 was only 60% of lower limb as he had undergone amputation of right leg below his knee. It was the case of the respondent no.1 that he was self employed on the date of the accident, though, no evidence in this regard was led by the respondent no.1. He submits that, therefore, the learned Tribunal has erred in taking the functional disability of the respondent no. 1 to the whole body also as 60%.

11. On the other hand, the learned counsel for the respondent no.1 submits that the respondent no.1 was, in fact, working as a labourer and was aged around 59 years. He submits that, therefore, no fault can be found in the learned Tribunal taking the functional disability of the respondent no.1 as 60%.

12. I have considered the submissions made by the learned counsels for the parties. The learned Tribunal while assessing the functional disability suffered by the respondent no.1 has



rightly relied upon the judgment of the Supreme Court in ***Raj Kumar v. Ajay Kumar and Another***, (2011) 1 SCC 343, while has laid down the principles to be followed in such determination, as under:-

“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 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.

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19. We may now summarise the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).

(iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."

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13. From the above, it is apparent that for assessing the functional disability to the whole body, the vocation of the injured is also to be kept in mind. Though the learned counsel for the respondent no.1 has stated that the respondent no.1 was working as a labourer at the time of the accident, his own case before the learned Tribunal was that he was self-employed. The nature of the self employment, however, could not be proved by the respondent no.1.

14. In that view of the matter, and keeping into account the age of the respondent no.1, in my opinion, the functional disability of the respondent no.1 should have been taken as 50%. The Impugned Award shall stand modified to this extent.

Rate of interest:

15. The next challenge of the appellant to the Impugned Award is to the rate of interest awarded by the learned Tribunal on the compensation.

16. The learned counsel for the appellant submits that the learned Tribunal has erred in awarding interest at the rate of 10% per annum in favour of the respondent no.1. He submits that the rate of interest during the relevant period would be around 8% per annum.

17. This Court while issuing notice on this appeal, vide its order dated 14.07.2017, had directed the appellant to deposit the entire awarded amount with interest at the rate of 9% per annum with the learned Tribunal. In my view, the rate of interest



prescribed by this Court in its order dated 14.07.2017 is reasonable.

18. Accordingly, the Impugned Award is modified to the extent that the appellant shall be liable to pay interest on the compensation awarded in favour of the respondent no.1 at the rate of 9% per annum from the date of filing of the Detailed Accident Report till the date of deposit thereof with the learned Tribunal.

Conclusion and Directions:

19. In view of the above, the Impugned Award is modified. The compensation amount shall be re-assessed by the learned Tribunal. The parties, that is, the appellant and the respondent no.1 shall appear before the learned Tribunal for the above purpose on 16th October, 2023.

20. The learned counsel for the respondent no.1 submits that the date of the accident was 21.06.2014. At that time, the respondent no.1 was aged around 59 years. This Court, by its order dated 14.07.2017, had directed only 50% of the awarded amount to be released in favour of the respondent no.1. He prays that the entire amount of compensation along with interest, as re-determined, be now released in favour of the respondent no.1 as the respondent no.1 is aged around 68 years as on date.

21. I find merit in the submission made.



22. Accordingly, the learned Tribunal is directed to release the re-determined compensation along with interest in favour of the respondent no.1 as a lumpsum.

23. The excess amount deposited by the appellant shall be released in favour of the appellant along with interest accrued thereon.

24. The Statutory amount deposited by the appellant for the present appeal shall be released in favour of the appellant along with interest accrued thereon.

25. The appeal is disposed of in the above terms.

NAVIN CHAWLA, J

SEPTEMBER 14, 2023/rv/rp