



2023:DHC:8723



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

Date of decision: 05.12.2023

+ MAC.APP. 480/2019
NAND RAM

..... Appellant

Through: Mr.C.S. Parashar, Adv.

versus

PARVINDER SINGH

..... Respondent

Through: Mr.Anil Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CM APPL. 18482/2019

1. This application has been filed seeking condonation of delay of 56 days in the filing of the present appeal.
2. For the reasons stated in the application, the delay is condoned.
3. The application is allowed.

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4. This appeal has been filed challenging the Award dated 25.10.2018 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accident Claims Tribunal-01, North District, Rohini Courts, Delhi (hereinafter referred to as

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the 'Tribunal') in MACT No. 4431/2016 titled *Nand Ram v. Parvinder Singh*.

5. It was the case of the appellant herein/claimant before the learned Tribunal, that on 02.04.2014, the appellant along with his son Sh.Vinod was going to the house of the daughter of the appellant. At about 06:15 PM, when they reached Bawana Road near a liquor shop in front of Sardar Colony and were crossing the road on foot, all of a sudden, the Offending Vehicle, that is, a car (Swift) came at a high speed in a rash and negligent manner and hit the appellant, as a result of which he sustained injuries. He was taken to the Ishan Hospital, Rohini, Delhi from where he was referred to the Max Hospital, Shalimar Bagh, Delhi.

6. The learned Tribunal, on the basis of the statement of the appellant (PW-1) and his son (PW-2), has held that the accident had taken place due to the rash and negligent driving of the driver of the Offending Vehicle. The learned Tribunal awarded the following compensation in favour of the claimant/appellant:-

(i) Special diets:	Rs. 15,000/-
(ii) Conveyance:	Rs.15,000/-
(iii) Pain & Suffering:	Rs.20,000/-
(iv) Mental & Physical Shock:	Rs.20,000/-
Total:	Rs.70,000/-

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7. The appellant is aggrieved of the non-grant of compensation towards loss of future Income and towards the attendant charges.

8. The learned counsel for the appellant submits that the appellant, in his evidence by way of an affidavit, had stated that he was working as a chowkidar and was earning around Rs.8,000/- per month. He submits that the income of the appellant was, in fact, only Rs. 5,000/- per month. He submits that Dr. Navneet Goyal, MS (Specialist Orthopaedic) with Dr.BSA Hospital (PW-3) had proved the disability certificate (Ex.PW3/1), which showed that the appellant has suffered 83% permanent disability in relation to his left upper limb and left lower limb. He submits that merely because the appellant had failed to produce his employer, and the learned Tribunal, on visual inspection of the appellant, found the appellant to be in a miserable state, the learned Tribunal should not have come to the conclusion that the appellant was not entitled to compensation towards loss of income.

9. He further submits that the learned Tribunal has also erred in observing that the disability could have been suffered by the appellant due to an injury suffered by him subsequent to the accident. He submits that there was no proof of the same.

10. He submits that the learned Tribunal also erred in not awarding any compensation towards Attendant Charges. He submits that even where the family members look after the

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injured, compensation towards Attendant Charges should be awarded to the injured.

11. On the other hand, the learned counsel for the respondent submits that the accident had taken place due to the own negligence of the appellant. He submits that the appellant admitted that he was under the influence of liquor at the time of the accident.

12. He further reiterates that the appellant did not produce any evidence in support of his claim of being employed at the time of the accident.

13. The learned counsel for the respondent further submits that the disability certificate also does not certify whether the disability of the appellant was due to the accident in question. He submits that PW-3, in his cross-examination, had stated that he could not give any opinion on how old the injuries suffered by the appellant were, and could not also comment if the injuries suffered the appellant were due to the accident in question or had fully recovered. He submits that, therefore, the appellant had failed to prove the injury suffered by him due to the accident, as also his income, leaving no choice with the learned Tribunal but to reject his claim for loss of income.

14. As far as compensation towards the Attendant Charges is concerned, he submits that as the appellant had not led any evidence on hiring an attendant or incurring any charges for the same, he was not entitled to any compensation towards the Attendant Charges.

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

16. At the outset, the submission of the learned counsel for the respondent that the accident had taken place due to the own negligence of the appellant, cannot be accepted. In the absence of any cross-objection or cross-appeal by the respondent, the respondent cannot be allowed to agitate against the findings of the learned Tribunal, which has held that the accident had taken place due to the rash and negligent driving of the Offending Vehicle.

17. As far as the claim of loss of income is concerned, the appellant has to prove the disability suffered by him due to the accident, as also his income at the time of the accident.

18. It is noticed that the disability certificate issued in favour of the appellant is dated 23.08.2017, that is, more than three years after the date of the accident. From the evidence of the appellant himself, it is also apparent that from the date of the accident, the appellant has suffered at least two further accidents in the form of a slip in the bathroom on 23.09.2014 (as is admitted in the cross-examination recorded on 23.04.2018) and then another slip on or about 22.09.2016 (as is evident from the discharge summary from the Max Hospital-Ex.W1/32).

19. At the same time, the discharge summary from the Max Hospital dated 03.04.2014 shows that he was admitted to the said hospital with a history of a road accident on 02.04.2014.

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This corroborates the version of the appellant that he suffered injuries in the road accident in question. He remained hospitalized till 14.04.2014. In his course of treatment, he underwent various surgeries, details whereof are given in the discharge summary itself. The same corroborates to some extent the disability certificate that was issued later.

20. While it may be true that the appellant may not have been strictly able to prove that the disability suffered by him can be only and solely attributable only to the accident in question, a major portion of the same would certainly be due to the accident, as is corroborated from the surgeries undergone by him.

21. This now brings this Court to the question of the determination of the functional disability of the appellant. The appellant was aged 62 years at the time of the accident. He is a retired employee and had claimed that he was working as a chowkidar at the time of the accident. Though he could not produce any evidence in support of the above assertion, in my opinion, his statement, in the absence of any proof to the contrary, could have been accepted by the learned Tribunal. It is to be remembered that in a claim for compensation under the Motor Vehicles Act, 1988, the claimant is not to prove his claim beyond reasonable doubt, but on the touchstone of preponderance of probabilities. The Supreme Court in ***Chandra Alias Chanda Alia Chandraram & Anr. v. Mukesh Kumar Yadav & Ors.*** (2022) 1 SCC 198, has held that a certain amount

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of guesswork may also be permitted for the Tribunal to make. It was held as under:

“9. It is the specific case of the claimants that the deceased was possessing heavy vehicle driving licence and was earning Rs 15,000 per month. Possessing such licence and driving of heavy vehicle on the date of accident is proved from the evidence on record. Though the wife of the deceased has categorically deposed as AW 1 that her husband Shivpal was earning Rs 15,000 per month, same was not considered only on the ground that salary certificate was not filed. The Tribunal has fixed the monthly income of the deceased by adopting minimum wage notified for the skilled labour in the year 2016. In absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the deceased. In absence of documentary evidence on record some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality. Merely because the claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income. There is no reason to discard the oral evidence of the wife of the deceased who has deposed that late Shivpal was earning around Rs 15,000 per month.”

(Emphasis Supplied)

22. In the present case, the appellant was a retired employee. The learned Tribunal, on an oral observation of the appellant, came to a conclusion that his version of him working post the retirement cannot be accepted. This approach of the learned Tribunal cannot be accepted. The appellant had suffered 83%



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permanent disability in relation to his left upper limb and left lower limb, whether due to the accident or thereafter. The condition of the appellant at the time of his appearance before the learned Tribunal was, therefore, not relevant. What was to be considered by the learned Tribunal was whether the appellant was in a position to work at the time just before the accident.

23. The appellant was only 62 years old at the time of the accident. It is not uncommon for a person to keep working in some part-time job after retirement. The appellant claimed that he was working as a security guard and was drawing a salary of Rs. 5,000/-. In my opinion, the said claim of the appellant was worthy of acceptance by the learned Tribunal.

24. As far as the functional disability to the whole body is concerned, keeping in view the circumstances explained above as also the principles enunciated by the Supreme Court in *Raj Kumar v. Ajay Kumar & Anr.* (2011) 1 SCC 343, the functional disability of the appellant to the whole body is determined as 50%.

25. In view of the above, the appellant is held entitled to compensation towards loss of income, calculated as under:-

$$Rs.5000/- \times 12 \times 7 \times 1/2 = Rs.2,10,000/-$$

26. As far as the claim of compensation towards attendant charges is concerned, in my view, the discharge summary itself shows that the appellant had remained admitted in hospital from 03.04.2014 to 14.04.2014. He would have required special care not only while he was admitted in hospital but also thereafter,

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keeping in view the surgeries undergone by him. The learned Tribunal has, therefore, erred in not granting compensation towards attendant charges in favour of the appellant.

27. Even in the absence of proof of an attendant being hired by the appellant or any expenses being incurred on the same, the learned Tribunal should have kept in view that some family member of the appellant would certainly have contributed towards the same.

28. In **Kajal v. Jagdish Chand & Ors.** (2020) 4 SCC 413, the Supreme Court held as under:

“21. Though the claimant would have been entitled to separate attendant charges for the period during which she was hospitalised, we are refraining from awarding the same because we are going to award her attendant charges for life. At the same time, we are clearly of the view that the tortfeasor cannot take benefit of the gratuitous service rendered by the family members. When this small girl was taken to PGI, Chandigarh, or was in her village, 2 to 3 family members must have accompanied her. Even if we are not paying them the attendant charges they must be paid for loss of their wages and the amount they would have spent in hospital for food, etc. These family members left their work in the village to attend to this little girl in the hospital at Karnal or Chandigarh. In the hospital, the claimant would have had at least two attendants, and taking the cost of each at Rs 500 per day for 51 days, we award her Rs 51,000.”



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29. Keeping in view the overall circumstances, an amount of Rs.1,00,000/- is found to be just and reasonable compensation payable to the appellant towards attendant charges.

30. Accordingly, the compensation amount is enhanced by Rs.2,10,000 + Rs.1,00,000= Rs.3,10,000/-. The said enhanced compensation shall also carry interest at the rate of 9% from the filing of the Detailed Accident Report, that is, 21.07.2014, till its realisation.

31. The respondent shall deposit the enhanced amount with the learned Tribunal within a period of eight weeks. The same shall be released to the appellant as per the scheme of disbursal stipulated by the learned Tribunal in the Impugned Award.

32. The appeal is allowed in the above terms.

33. There shall be no order as to costs.

NAVIN CHAWLA, J

DECEMBER 5, 2023/rv/AS

Click here to check corrigendum, if any

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