



2023:DHC:8109



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

Reserved on: 03.10.2023
Pronounced on: 08.11.2023

+ **MAC.APP. 1092/2017**

U P STATE ROAD TRANSPORT CORPORATION

..... Appellant

Through: Mr.Shadab Khan, Adv.

versus

JITENDER KUMAR RANA & ANR Respondents

Through: Mr.Yogesh Swaroop, Adv.

+ **MAC.APP. 1131/2017**

JITENDER KUMAR RANA

..... Appellant

Through: Mr.Yogesh Swaroop, Adv.

versus

RAVINDER KUMAR DWIVEDI & ANR Respondents

Through: Mr.Shadab Khan, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. These appeals have been filed by the Uttar Pradesh State Road Transport Corporation (hereinafter referred to as the 'UPSRTC') and the Claimant-Shri Jitender Kumar Rana, respectively challenging the Award dated 05.09.2017 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accident Claims Tribunal, Shahdara District, Karkardooma Courts, Delhi (hereinafter referred to as the 'Tribunal') in MAC No. 205/2013 (New MAC No. 282/2016)



2023:DHC:8109



titled *Sh. Jitender Kumar Rana v. Sh. Ravinder Kumar Dwivedi & Anr.*.

2. As the appeals challenge the same Award, they are being considered and disposed of by way of this common judgment.

Background Facts:

3. Before the learned Tribunal, it was the case of the Claimant, that is, the appellant in MAC APP. 1131/2017, that on 27.06.2013 at 06.30 a.m., he along with his friends was coming from Allahabad to Delhi in a bus bearing registration no. UP-70DT-0132 (hereinafter referred to as the 'Offending Bus') driven by Shri Ravinder Kumar Dwivedi (hereinafter referred to as the 'Driver') and owned by the UPSRTC- appellant in the MAC APP. 1092/2017. It was stated that the driver of the Offending Bus was driving the same at a high speed and in a rash and negligent manner, as a result of which, when the said Offending Bus reached near Mourya Petrol Pump, PS Bichhua, Mainpuri, Eta, Uttar Pradesh, it collided with another Roadways Bus, with the other bus scratching past the Offending Bus. The Claimant was sitting on the window seat behind the driver near the emergency gate. The emergency gate was not properly bolted/fixed. In the accident, the Claimant sustained grievous injury. He was taken to the Maharaja Tej Singh District Hospital and thereafter referred to the Ram Manohar Lohia Hospital, New Delhi. He was later shifted to Sir Ganga Ram Hospital, New Delhi. An FIR No. 76/13, at Police Station Bichhua, Uttar Pradesh was also registered on the complaint filed by the Conductor of the Offending Bus. As a result of the abovementioned accident, the right hand of the claimant was



amputated till the shoulder. The Claimant pleaded that he was working as a typist for various advocates at the Tis Hazari Courts, Delhi. He filed his claim seeking compensation for the injuries suffered in the road accident.

4. Based on the evidence led before it, the learned Tribunal has held that the claimant had been able to prove that the accident had taken place due to the Offending Bus being driven in a rash and negligent manner by its driver. The learned Tribunal awarded the following compensation to the Claimant: -

“44. Considering all the facts and circumstances of the case, I am of the opinion that petitioner is entitled for the compensation as under:

1	Compensation towards pain and sufferings	Rs.1,50,000/-
2	Compensation towards medical bills	Rs.1,78,020/-
3	Loss of earning capacity due to disability	Rs.25,62,462/-
4	Loss of earning for a period of 12 months	Rs.2,31,897/-
5	Attendant charges	Rs.21,000/-
6	Special diet and conveyance	Rs.50,000/-
7	Compensation on account of expenses incurred on engaging driver for 2 years	Rs.1,20,000/-
8	Compensation towards loss of amenities and enjoyment of life	Rs.1,50,000/-
9	Compensation towards disfigurement	Rs.1,50,000/-
10	Compensation on account of artificial limb	Rs.10,00,000/-
11	Compensation on account of maintenance of artificial limb	Rs.1,50,000/-
	TOTAL	Rs.47,63,379/-



Challenge to the finding of Negligence of the Driver of the Offending Bus:

5. The UPSRTC, that is, the appellant in MAC. APP. 1092/2017, challenges the Impugned Award on the ground that the learned Tribunal has erred in holding that the injured/claimant has suffered injuries due to the rash and negligent driving of the Offending Bus. It contends that the Claimant has suffered injuries due to his own fault and negligence, inasmuch as he had put his right hand outside the window when the other vehicle came from the opposite side and passed by scratching the Offending Bus at the driver's side.

6. The learned counsel for the UPSRTC submits that the FIR has been registered on the complaint of the Conductor of the Offending Bus, who stated that an unknown bus came from the opposite direction at a very high speed, and in a negligent manner hit the right side of the Offending Bus. Even though the driver of the Offending Bus took the Offending Bus to the extreme left side of the road on the mud road, the right portion of the Offending Bus got damaged due to the impact of the other bus. He submits that even after investigation by the police, no case of negligence has been made out against the driver of the Offending Bus. He submits that in fact, the Claimant would not have suffered any injury if he had not put his hand outside the window.

7. He submits that the statements of the Claimant (PW1) and that of Ms. Chitrlekha (PW2) and Shri Pradeep Kumar (PW3) have been wrongly relied upon by the learned Tribunal for its finding of negligence against the Offending Vehicle. He submits that PW2 and



PW3 are friends of the Claimant and had appeared just to improve the case of the Claimant. They are not reliable and independent witnesses. No independent eyewitness to the accident has been produced by the Claimant.

8. He submits that, on the other hand, the driver of the Offending Vehicle has been examined before the learned Tribunal as R1W1. In his statement, he has deposed about the manner in which the accident had taken place and further stated that the Claimant suffered the injuries as he had put his hand outside the window in spite of being warned not to do so.

9. Placing reliance on the judgment of the Supreme Court in ***Oriental Insurance Co. Ltd. v. Meena Variyal & Ors.***, (2007) 5 SCC 428; and of this Court in ***New India Assurance Ltd. v. Deviki & Ors.***, Neutral Citation: 2016:DHC:1735, he submits that in a Claim Petition filed under Section 166 of the Motor Vehicles Act, 1988, the Claimant must prove negligence of the driver or owner of the vehicle involved in the accident. He submits that as in the present case the Claimant has failed to discharge this proof, the Claim Petition was liable to be dismissed.

10. The learned counsel for the UPSRTC, placing reliance on the judgment of this Court in ***Uttarakhand Transport Corporation v. Anandi Devi & Ors.*** Neutral Citation No. 2021:DHC:1535, submits that the learned Tribunal has erred in not attributing contributory negligence on the Claimant as the Claimant was himself negligent in putting his right hand outside the window of the running Offending Bus, which resulted in the injuries suffered by him. He submits that



2023:DHC:8109



the learned Tribunal failed to consider that the Driver and the Conductor of the Offending Bus had already warned the passengers not to take any part of their body outside the window of the bus, but the Claimant did not pay any heed to such warning. He submits that it was not the case of the Claimant before the learned Tribunal that due to the graze of the two vehicles, the emergency gate of the bus opened and he fell down outside the bus. The Claimant only asserts that the emergency gate was not properly bolted/fixed. He submits that, therefore, at least 50% of contributory negligence should be attributed to the claimant for putting his hand outside the window despite warnings.

11. On the other hand, the learned counsel for the Claimant submits that the learned Tribunal has rightly held that the driver of the Offending Bus was driving the same at a high speed and in a rash and negligent manner due to which the accident in question had taken place and the Claimant sustained grievous injuries. He submits that the Claimant had proved his case by way of his own testimony, as also the statement of PW2 and PW3, while the UPSRTC has failed to prove before the learned Tribunal that the Claimant had put his hand outside the window.

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

13. In the present case, the claimant (PW1) had stated that at the time of the accident, he was travelling in the offending bus and was seated at the seat behind the driver of the bus. He further deposed that the emergency gate was not properly fixed/bolted and he made a



complaint in this regard to the driver, however, the driver paid no heed to the same. He further deposed that when the other bus collided with the offending bus, he sustained injuries resulting in the amputation of his right hand from the shoulder. He denied the suggestion that his hand was kept outside the window or that the accident had taken place due to his negligence.

14. Ms.Chitralekha (PW2) supported the case of the claimant. Similarly, Sh.Pradeep Kumar (PW3) also supported the case of the claimant and their testimony could not be in any manner shaken in the cross-examination.

15. The reliance of the learned counsel for the UPSRTC on the FIR registered by the police to shake the testimony of the claimant, PW2, and PW3 cannot be accepted, as the same has been registered on the basis of the statement made by the conductor of the Offending Bus, who is an employee of the UPSRTC, and would have an interest in protecting the driver of the Offending Bus. Even otherwise, the conductor of the Offending Bus was not produced before the learned Tribunal.

16. The photographs of the Offending Bus also show that the emergency gate of the offending bus was broken and not properly fixed/bolted.

17. From the evidence of the parties, therefore, in my opinion, the learned Tribunal has rightly concluded that the claimant had suffered injuries due to the Offending Bus being driven in a rash and negligent manner and due to its emergency gate not being properly fixed/bolted.

18. Even if the case of the UPSRTC/driver of the Offending Bus



that another Bus coming from the opposite side had brushed the side of the Offending Bus is to be believed, it would be a case of composite negligence and, therefore, it would be open to the claimant to claim compensation from the owner of the Offending Bus, that is, UPSRTC.

19. From the photographs it is also evident that the emergency door of the bus was indeed broken and it could have been quite possible that the deceased suffered the injury as his hand got squeezed in the emergency door due to the impact of the accident.

20. The plea of the UPSRTC that the contributory negligence should be attributed to the claimant as he had kept his hand outside the window of the Offending Bus also cannot be accepted. It is in the testimony of the driver of the offending bus, examined as R1W1, that he had warned the passengers not to keep their body parts outside of the windows of the Bus. Generally, such statements are never made by the driver of a bus. This claim appears to be an afterthought. Further, if the driver of the bus was concentrating on driving the Offending Bus, he would not have noticed that the hand of the claimant was outside the window of the bus at the time of the accident. Therefore, his testimony in this regard cannot be accepted.

21. I also draw support from the judgment of this Court in ***Uttaranchal Transport Corp. v. Navneet Jerath*** 2012 SCC OnLine Del 36, wherein it was observed as under:

“9. As far as the First Respondent's plea of placing his arm/elbow on window sill is concerned, it is important to note that the Appellant Corporation's bus was running on



night service. It is no where the Appellant's case that First Respondent had flung his arm outside the window. Most of the passengers do sleep while travelling in a bus running in the dead of night. It was Appellant's duty to ensure that the passengers are carried to their destination with adequate care and safety. It was expected of the Appellant's driver to have taken care that his bus would not come too close to any vehicle coming from the opposite direction in order to avoid any danger to the safety of the passengers in which the Appellant's driver utterly failed.

10. In Delhi Transport Undertaking v. Krishnawanti, 1972 ACJ 423, an accident took place while a passenger was travelling in a bus resting her elbow on the window. The driver suddenly overtook a cart carrying logs of wood which were protruding. A passenger's elbow struck against a log and she was injured. This Court held that there was no contributory negligence on the part of the passenger and the accident took place because of the negligent driving of the bus driver. Para 10 of the report is extracted hereunder:—

“10. It is the duty of the driver of the public buses to take all steps, which a person of ordinary prudence would take, to ensure the safety of the passengers. The driver of the bus in question cannot be said to be unaware of the fact that the passengers were in the habit of putting their hands outside the bus. He could thus foresee that while overtaking a moving cart if he would not leave sufficient space between the cart and the bus, there was a likelihood of the passengers' arms being injured. The respondent had elbow on the window while sitting in the bus. This cannot be said to be negligent way of sitting. On the other hand it may be called a slightly more comfortable way of sitting. The driver having noted the protruding wooden logs should have ensured a



sufficient space between the bus and the cart while overtaking it. In case, he found that the oncoming traffic did not permit him of that much space, it was his duty not to risk overtaking the cart. The driver thus was rightly held negligent in overtaking the cart which resulted in injuries to the respondent.”

11. The Delhi High Court in *Krishnawanti (supra)* relied on a judgment of Punjab High Court in *The State of Punjab v. Guranwanti*, 1960 PLR 571, where it was held as under:—

“It is well known that often passengers travel with their elbows resting on the window of the car. There is no prohibition against it. The plaintiff at that time of the morning considering the state of traffic cannot be said to have failed to use reasonable care for her safety by resting her below on the window.”

12. In *Ramesh Kumar Awasthi v. The Collector, Saharanpur*, AIR 1982 Allahabad 425, a similar question came before the Division Bench of Allahabad High Court. The Division Bench relied on *Krishnawanti (supra)* and held as under:—

“6. On the perusal of the evidence we are satisfied that the appellant had kept his elbow on the window sill when the accident occurred. It was the duty of both the drivers to ensure safety of the passengers and for that purpose they should have taken care to leave sufficient space between the two vehicles at the time of crossing each other. The story introduced by Satvir Singh (DW2) that the accident occurred as the driver of the bus coming from the opposite direction wanted to save a cow is a cock and bull story. No evidence has been produced to prove that story. The driver's evidence would have been the best evidence to prove the circumstances which led to the accident



but he was not produced. The drivers of the two buses were employees of the Corporation and they were best persons to state the truth about the accident but they were not produced for the reasons best known to the Corporation. The two drivers had special knowledge of the manner in which the accident took place and the reason for the two buses crossing each other with such closeness as to cause the accident. The Corporation did not produce them. Consequently, the irresistible conclusion is that if they had been produced their testimony would have gone against the case set up by the Corporation. It is well settled that if a witness having special knowledge of the facts is withheld it is legitimate to draw an adverse inference against that party. In our opinion, the two drivers were best persons to explain the circumstances which led to the accident and since the Corporation did not produce them we have to proceed on the assumption that the accident occurred on account of their negligence. Moreover, the fact that the two buses plying on a wide road, crossed each other so closely without there being any justification for the same itself proves the negligence of the two drivers.

9. It is a matter of common knowledge that passengers sitting near the window rest their hand on the window sill specially when on a long journey in the countryside. The driver of a bus carrying passengers on long journeys is expected to have knowledge of this fact. The drivers of the two buses were bound to take precaution against the possibility that while grazing each other some person might be placing his hand or elbow on the window sill. Since the two vehicles came too close to each other resulting into accident without there being justification



for the same it has to be presumed that the drivers had failed to take reasonable care for the safety of passengers and therefore they were negligent. In Jamnagar Motor Transport Union v. Gokaldas Pitambar's L.Rs. (1966 ACJ 42) the Supreme Court in a similar situation where the two buses grazed while crossing each other held that both the drivers were negligent. The view that we are taking has been taken by various High Courts in a number of cases. Reference may be made to State of Punjab v. Smt. Guranwanti (AIR 1960 Punj.490), Sushma Mitra v. M.P.S.R.T.C. (1974 ACJ 87), Delhi Transport Undertaking v. Krishnawanti (1972 ACJ 423) and General Manager State Road Transport Corpn. v. Krishnan (1981 ACJ 273).

10. We are then faced with the question as to whether the appellant was guilty of contributory negligence as his right hand elbow was protruding out of the bus and for that reason he was not entitled to any compensation. On the evidence on record it is well established that the appellant was resting his right elbow on the window sill at the time when the accident occurred. Bool Chand, Conductor of the bus has stated that a portion of 2 1/2" of the appellant's right elbow was protruding outside the bus. His statement thus makes it amply clear that the appellant had not taken his arm out of the window, in-stead while resting his hand on the window sill a small portion of his hand 2 1/2" was protruding out of the bus. This is a normal for a passenger who sits on the seat near the window to rest his hand on the window sill. There is no law prohibiting resting of hand on the window sill or protruding small part of the body outside the bus. There is further no evidence on record to show that any signboard was placed in the



bus warning the passengers from placing their elbows or hands on the window sill. The conductor also did not state that on seeing the bus coming from the opposite direction he had warned the appellant to keep his elbow inside the bus. In Sushma Mitra v. M.P. State Road Transport Corporation (1974 ACJ 87) it was held that the appellant was not guilty of contributory negligence in keeping his elbow on the window sill because it is common practice for the passengers who sit near the window to rest their arm on the window and there was no evidence that the passengers were cautioned not to do so. The Court held that the passenger was not guilty of any contributory negligence. We would like to emphasize that the evidence on record shows that the place where the accident occurred was outside the town and the traffic was not heavy and there was ample space for the two vehicles to pass each other without coming close. If the drivers had taken adequate care for the safety of the passengers the accident could not have occurred in the manner it has happened in the present case. There is also no evidence that the bus coming from the opposite direction blew its horn or that the appellant was cautioned by the conductor or the driver on seeing the bus coming from the opposite direction to remove his hand from the window sill. The appellant was going on a long journey from Meerut to Rishikesh and in that process it was quite natural for him to rest his hand on the window sill. It appears that two vehicles were being driven with excessive speed as merely by the impact the appellant's fore-arm was slit and severed instantaneously leaving no time for the appellant to withdraw his hand. These circumstances show that the appellant was not guilty of negligence by placing his elbow on the window sill."



13. Simply because the First Respondent was resting the elbow on window sill and even if his elbow was protruding by a few inches, it was the duty of Appellant's driver to drive the bus in such a manner that there is safe distance between the two vehicles. That having not been done, it has to be held that the accident took place on account of rash and negligent driving of driver of bus number UP-02B-6972 owned by the Appellant."

22. The above judgment was followed by this Court in ***Rajasthan Roadways, Alwar v. Bhagwan Singh & Anr.*** N.C. No.2012:DHC:7309.

23. As far as the judgment in ***Anandi Devi*** (supra) is concerned, in the said case, the Court had found that the deceased had taken his head out of the window at the time of the accident and his head hit the tractor trolley resulting in the fatal injury. The said judgment, therefore, would have no application to the facts of the present case.

24. In view of the above, I find no merit in the challenge of the UPSRTC on the issue of negligence. The same is, accordingly, rejected.

Challenge on the assessment of Functional Disability:

25. The UPSRTC challenges the Impugned Award also insofar as it assesses the functional disability of the Claimant as 85% with respect to the whole body.

26. The learned counsel for the UPSRTC submits that the Claimant has failed to prove that he was working as a Typist. He submits that there is no independent witness to prove the fact that the injured did typing work, nor did the Claimant produce any document/diploma



regarding his typing skills. He submits that as the Disability Certificate is issued only towards one part of the body, that is the right arm of the Claimant, the functional disability towards the whole body needs to be assessed as only at 40%-50% at the most.

27. On the other hand, the learned counsel for the Claimant submits that the Claimant was working as a Typist for various advocates at the Tis Hazari Courts, Delhi. Since he lost his right hand, he is unable to carry out his work anymore. He submits that the learned Tribunal erred in assessing the Functional Disability of the Claimant as only 85%; it should be enhanced to 100%.

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

29. The Disability Certificate, that is Ex.PW-1/10, shows that the claimant has suffered a Permanent Disability of 85% in relation to his right upper limb due to amputation; there is above elbow amputation of the right hand till shoulder. From the statement of the Claimant and that of PW2 and PW3, it stood proved that the Claimant was working as a Typist at Tis Hazari Courts, Delhi. Though the Claimant did not produce any certificate or diploma regarding his typing skills or permission from the High Court for doing typing work in Tis Hazari Courts, in my opinion, these are not mandatory documents for working as a typist and mere non-production of the same cannot cast a doubt on the claim of the Claimant. Similarly, non-examination of any lawyer to testify that the Claimant was working as a Typist, cannot be fatal to the claim of the Claimant, as the other evidence was sufficient to prove the same. The Claimant had also produced before the learned



Tribunal his Income Tax Returns, which supported his claim of income, on the basis whereof the compensation for loss of income has been assessed by the learned Tribunal.

30. As far as PW2 and PW3 are concerned, barring asking them if they had seen any certificate of the Claimant regarding his typing skills and giving a suggestion that the Claimant was not earning Rs. 20,000/- per month, the UPSRTC could not cast a doubt on the statement of PW2 and PW3. Merely because PW2 and PW3 are the friends of the Claimant, their statement cannot be doubted.

31. In **Raj Kumar v. Ajay Kumar & Anr.**, (2011) 1 SCC 343, the Supreme Court has laid down the principles applicable to determine the compensation to be awarded in case of an injury suffered in a motor vehicle accident towards loss of income, as under:

“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.

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.

xxxx

16. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular, the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is



required to “hold an enquiry into the claim” for determining the “just compensation”. The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the “just compensation”. While dealing with personal injury cases, the Tribunal should preferably equip itself with a medical dictionary and a handbook for evaluation of permanent physical impairment (for example, Manual for Evaluation of Permanent Physical Impairment for Orthopaedic Surgeons, prepared by American Academy of Orthopaedic Surgeons or its Indian equivalent or other authorised texts) for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view the First Schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen.”

(Emphasis Supplied)

32. In the present case, with the loss of his right arm, the Claimant would not be able to pursue the job of a Typist. Even if the Claimant was doing a work other than that of a Typist, the disability suffered by him would have a huge impact on his capacity/efficiency to work. At the same time, the permanent disability will not lead to a total loss of capacity for the Claimant to earn his livelihood. As the Claimant has stated that he was working in the Court Complex, he would be able to earn some livelihood through other clerical work in the Court Complex.

33. I, therefore, find the assessment of the functional disability as 85% to the whole body to be fair and reasonable, and not warranting any interference from this Court.



34. In view of the above, I do not find any merit in the challenge to the Impugned Award, both from the UPSTRC and the Claimant, on this account. The same is, accordingly, rejected.

Challenge of UPSRTC to the determination of the Income of the Claimant:

35. The next challenge of the UPSRTC to the Impugned Award is by contending that the learned Tribunal has erred in assessing the income of the Claimant as Rs. 2,31,897/- per annum.

36. The learned counsel for the UPSRTC submits that the claimant has failed to prove that he was working as a typist and was earning Rs. 20,000/- per month. He submits that apart from producing his Income Tax Returns (in short, 'ITRs'), the Claimant did not file any other evidence that could prove his actual income/vocation. He submits that the ITRs also do not show the source of income of the Claimant and, therefore, the income/vocation of the Claimant was not proved before the learned Tribunal.

37. I do not find any merit in the above challenge of the UPSRTC.

38. I have held hereinabove that the Claimant was able to prove his claim of working as a typist.

39. As far as the ITRs are concerned, the Supreme Court in ***Kalpanaraj v. T.N. State Transport Corpn.*** (2015) 2 SCC 764 has held that even if the only documentary evidence available in support of the claim of income is an Income Tax Return, it is sufficient and must be given due weightage. It was held as under:

“8. It is pertinent to note that the only available documentary evidence on record of



the monthly income of the deceased is the income tax return filed by him with the Income Tax Department. The High Court was correct therefore, to determine the monthly income on the basis of the income tax return.... ”

40. The above view was followed by the Supreme Court in **K. Ramya v. National Insurance Co. Ltd.**, 2022 SCC OnLine SC 1338.

41. In the present case, the learned Tribunal has placed reliance on the Income Tax Return of the Claimant proximate to the date of the accident to determine his income. The same cannot be faulted.

42. In view of the above, I do not find any merit in the above challenge of the UPSRTC. The same is, accordingly, rejected.

Challenge to compensation under Loss of Income During Treatment:

43. The learned counsel for the UPSRTC submits that once the learned Tribunal has awarded compensation under the head of loss of earning capacity to the claimant adopting the multiplier method, additional compensation towards loss of earning for the period of treatment of 12 months cannot be awarded in favour of the claimant.

44. I do not find merit in the said challenge by the UPSRTC to the Impugned Award. The learned Tribunal, keeping in view the nature of injuries suffered by the Claimant, held that the Claimant must have been unable to do any work for a period of twelve months. The learned Tribunal, therefore, awarded the annual income of the Claimant to him towards loss of income for the period of treatment. In view of the judgment of **Raj Kumar** (supra), wherein similar relief had been granted to the Claimant therein, the Award cannot be faulted.



Challenge to the non-grant of Future Prospects:

45. The Claimant challenges the Impugned Award on the ground that the learned Tribunal has erred in not granting any future prospects to the income of the Claimant.

46. I have considered the submissions made by the learned counsel for the claimant.

47. The Supreme Court in its judgment in ***National Insurance Co. Ltd. v. Pranay Sethi & Ors.*** (2017) 16 SCC 680, has held that where the deceased was self-employed or working on a fixed salary and was between the age of 40 to 50 years at the time of the accident, an addition of only 25% is to be made for the purposes of computation of the loss of future prospects to the income. It was held as under:

“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.”

48. In ***Lalan D. & Anr. v. Oriental Insurance Company Ltd.***, (2020) 9 SCC 805, the Supreme Court has held that the above principle would be applicable to a case of permanent disability as well.

49. In the present case, the Claimant was aged 46 years at the time of the accident. He was self-employed and working as a Typist.



Therefore, the learned Tribunal has erred in not taking into account the future prospects of the increase in the income while determining the compensation payable to the Claimant on account of loss of income due to permanent disability. There has to be an addition of 25% to the income of the claimant on account of the future prospects.

50. The Impugned Award shall stand modified to the above extent.

Challenge to the amount of compensation for Engaging a Driver:

51. The next challenge of the UPSRTC to the Impugned Award is to the award of compensation of Rs.1,20,000/- to the Claimant on account of the expenses incurred by the Claimant on engaging a driver for two years.

52. The learned counsel for the UPSRTC submits that the learned Tribunal has erred in granting an amount of Rs. 1,20,000/- on account of the expenses incurred by the claimant for engaging a driver for two years in addition to awarding the amount under the head of conveyance charges and also towards future loss of earnings. He submits that this leads to duplicacy of compensation under various heads for the same purpose.

53. On the other hand, the learned counsel for the claimant submits that the claimant has one car and he has kept Mr. Ranjeet Singh-PW-6 as a driver on a monthly salary of Rs.9,000/-per month. He submits that the claimant cannot drive the vehicle after the amputation of his right hand and he needs the services of a driver for moving from one place to another. He submits that, therefore, the learned Tribunal has rightly granted compensation on account of expenses incurred on engaging a driver for two years.



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

55. The learned Tribunal has awarded a sum of Rs. 50,000/- to the Claimant towards special diet and conveyance charges, observing that the Claimant has visited the hospital a number of times for treatment and must have taken a special diet in order to heal the wound suffered.

56. In the present case, the Claimant through the testimony of PW6 has been able to prove that as the Claimant could not, by himself, drive the vehicle/car due to the injuries suffered by him in the accident, he was forced to hire the services of PW6 as a driver to take the Claimant and his children around. This is an additional expense that the Claimant has been forced to incur due to the injury suffered by him and he deserves to be compensated for the same. The same cannot be said to be a duplication of the conveyance charges granted for the period of treatment; the two relate to different periods.

57. The learned Tribunal has taken the average salary of a driver to be Rs. 5,000/- per month and has awarded compensation of Rs. 1,20,000/- as salary for a period of two years. I find the same to be reasonable and not warranting any interference from this Court.

58. The above challenge of UPSRTC is, therefore, rejected.

Challenge to the Amount for Prosthetic Limb and its Maintenance:

59. The Claimant challenges the Impugned Award on the amount of compensation awarded by the learned Tribunal for the procurement of a prosthetic limb.

60. The learned counsel for the claimant submits that the learned Tribunal has erred in granting a meagre sum of Rs. 10 lakhs towards



the cost of procurement of the prosthetic limb. He submits that the quotation for the prosthetic limb provided by the P&O International (Ex.PW4/2) was of Rs. 52,20,773/-. The learned Tribunal also *suo moto* called for the quotation from Endolite India Ltd., which was of Rs. 43,56,000/- with a warranty of 3 years and Rs.46,00,000/- with a warranty of five years. In spite of the same, the learned Tribunal awarded only Rs.10,00,000/- as compensation towards the cost of the prosthetic limb, which is highly inadequate and the same deserves to be enhanced.

61. On the other hand, the UPSRTC challenges the grant of a sum of Rs.1,50,000/- towards the maintenance of the artificial limb over and above the award of a lump sum amount of Rs.10,00,000/- towards the cost of the artificial limb. The learned counsel for the UPSRTC submits that there is no justification for the award of this additional amount.

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

63. I may first reproduce the relevant findings of the learned Tribunal on the issue of prosthetic/artificial limb and its maintenance, as under:

“42. The artificial limb sought by petitioner is highly expensive. The bionic limb needs replacement during life time of the patient along with on going adjustments. The regular cost has to be borne by the patient. The physical therapy and occupational therapy help the patient to learn how to perform daily task at home or at work. The additional expenditure is required to use such kind of



limbs. The annual income of the petitioner was Rs.2,31,897/-. The petitioner will not be able to maintain such kind of limb due to regular expenditure. Keeping in view all these facts, I am of the view that petitioner can have such kind of prosthetics which can perform the most important basic functions as well as restore the outward appearance. To my mind, such kind of prosthetics can be easily available in the market. The petitioner is entitled for compensation of Rs. 10,00,000/- (Ten Lakh) towards artificial limb.

43. The artificial limb requires maintenance in future. The petitioner has to incur periodical expenses for the maintenance of the artificial limb. The cost of living has also increased. The award cannot be reopened time and again to award the compensation for maintaining the limb. The petitioner is entitled for compensation of Rs. 1,50,000/- on account of maintenance of artificial limb.”

64. In ***Mohd. Sabeer alias Shabir Hussain v. Regional Manager, U.P. State Road Transport Corporation***, 2022 SCC OnLine SC 1701, the Supreme Court, while considering a claim of an injured aged about 37 years, has observed and assessed the compensation towards a prosthetic limb, as under: -

“COMPENSATION FOR THE PURCHASE AND MAINTENANCE OF THE PROSTHETIC LEG

22.The High Court has awarded a compensation of Rs.5,20,000/- for the prosthetic limb and Rs.50,000/- towards repair and maintenance of the same. The Appellant submits that the cost of the prosthetic limb itself is Rs. 2,60,000/- and the life of the



prosthetic limb is only 5-6 years. The prosthetic limb also requires repair and maintenance after every 6 months to 1 year, and each repair costs between Rs.15,000 to Rs.20,000/-. This would mean that the prosthetic limb would last the Appellant for only 15 years under the current compensation. The Appellant at the time of the accident was aged 37 years and has a full life ahead. It has been clearly stated by this Court in the case of Anant Son of Sidheshwar Dukre (Supra) that the purpose of fair compensation is to restore the injured to the position he was in prior to the accident as best as possible. The relevant paragraph of the judgment is being extracted herein:

“In cases of motor accidents leading to injuries and disablements, it is a well settled principle that a person must not only be compensated for his physical injury, but also for the non-pecuniary losses which he has suffered due to the injury. The Claimant is entitled to be compensated for his inability to lead a full life and enjoy those things and amenities which he would have enjoyed, but for the injuries.”

“The purpose of compensation under the Motor Vehicles Act is to fully and adequately restore the aggrieved to the position prior to the accident.”

23. As per the current compensation given for the prosthetic limb and its maintenance, it would last the Appellant for only 15 years, even if we were to assume that the limb would not need to be replaced after a few years. The Appellant was only 37 years at the time of the accident, and it would be reasonable to assume that he would live till he is 70 years old if not more. We are of the opinion that the Appellant must be compensated so that he is able to purchase three prosthetic limbs in his lifetime and is able to maintain the same at least till he has reached 70 years of age. For the Prosthetic limbs alone, the Appellant is to



2023:DHC:8109



be awarded compensation of Rs. 7,80,000 and for maintenance of the same he is to be awarded an additional Rs. 5,00,000/-."

65. In the present case, the quotation of the prosthetic limb from P&O International Incorporation produced by the Claimant and the one procured by the Tribunal from Endolite India Ltd. were of a very advanced and high-end prosthetic limb. With the said limb, in fact, the Claimant would have been even able to perform typing work. The learned Tribunal, however, has held that keeping in view the monthly income of the Claimant, the same shall not be appropriate to be awarded to the Claimant. I do not find any reason to disagree with this finding of the learned Tribunal.

66. As far as the assessment of the cost of the prosthetic limb suitable for the Claimant is concerned, keeping in view the assessment made in ***Mohd. Sabeer*** (supra), I see no reason to interfere with the same.

67. On the challenge of the UPSRTC, it cannot be denied that the prosthetic limb would require regular maintenance. The Claimant would have to incur the cost of maintaining the prosthetic limb over and above the cost thereof. Therefore, no fault can be found in the learned Tribunal awarding a sum of Rs. 1,50,000/- to the Claimant towards the cost of maintenance of the prosthetic limb.

68. In view of the above, I do not find any merit in the above challenge of the Claimant and the UPSRTC to the Impugned Award on the compensation awarded towards the cost and maintenance of the prosthetic limb.



Challenge of the UPSRTC to Various Other Heads of Compensation:

69. The UPSRTC, in a vague manner, challenges the award of compensation of Rs.1,50,000/- towards pain and suffering, Rs.1,50,000/- towards loss of amenities of life, and Rs.1,50,000/- towards disfigurement, awarded in favour of the claimant as being highly excessive. It further challenges the award of compensation of Rs.50,000/- towards conveyance charges and special diet, and Rs.21,000/- towards attendant charges, that have been awarded by the learned Tribunal in favour of the claimant, as being without any proof and, therefore, liable to be set aside.

70. I do not find any merit in the above challenge of the UPSRTC to the Impugned Award.

71. As noted by the learned Tribunal, due to the injuries suffered by the claimant, the claimant remained admitted in the hospital between 27.06.2013 to 29.06.2013. On 03.07.2013, the claimant was admitted as an operated case of post-traumatic amputation of the right hand till shoulder and was discharged from the hospital on the same day. On 26.07.2013, he was again admitted to Sir Ganga Ram Hospital for skin grafting. He was discharged on the same day but continued to remain under follow-up treatment.

72. From the above, the compensation awarded by the learned Tribunal under the above heads in challenge by the UPSRTC, appears to be reasonable and does not warrant any interference from this Court.

73. The above challenge of the UPSRTC is, accordingly, rejected.



Challenge to the Rate of Interest:

74. The learned counsel for the UPSRTC submits that the learned Tribunal has erred in awarding the interest at the rate of 9% per annum. He submits that the same should not be more than 6% per annum.

75. I find no merit in the above contention of the learned counsel for the UPSRTC.

76. Apart from the fact that the rate of interest awarded by the learned Tribunal appears to be reasonable, there is no evidence or material placed on record by UPSRTC in support of its above challenge to the Impugned Award. The same is, accordingly, rejected.

Conclusion:

77. The Impugned Award shall stand modified to the above extent.

78. The appeals are disposed of in the above terms.

79. This Court vide its interim order dated 22.12.2017 in MAC. APP. 1092/2017, directed the UPSRTC to deposit an amount of Rs. 20,00,000/- with the Registrar General of this Court, and the execution of the Impugned Award was stayed on such deposit. In view of the present judgment, the UPSRTC is directed to deposit the remaining amount, computed after taking into consideration the modifications made hereinabove, along with the interest accrued thereon, with the Registrar General of this Court, within a period of eight weeks from the date of the judgment. The amount deposited by the UPSRTC shall be released in favour of the claimant as per the scheme of disbursal stipulated in the Impugned Award by the learned Tribunal.



2023:DHC:8109



80. The statutory amount deposited by the appellants shall be released in favour of the appellants along with interest accrued thereon.

81. There shall be no orders as to costs.

NAVIN CHAWLA, J.

NOVEMBER 08, 2023/AS/RP