



2024:DHC:4797



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

% **Judgment reserved on : 08 May 2024**
Judgment pronounced on : 01 July 2024

+ MAC.APP. 537/2019 and CM APPL. 46008/2022 (Stay), CM APPL. 46009/2022 (Delay of (days not mentioned) in re-filing the present appeal)

PHOOL SINGH Appellant

Through: Mr. M.K. Sinha, Adv.

versus

RAJASTHAN STATE ROAD CORPORATION & ANR

..... Respondents

Through: Dr. Ritu Bhardwaj, Adv.

+ MAC.APP. 46/2023
RAJASTHAN STATE ROAD CORPORATION AND ANR
..... Appellants

Through: Dr. Ritu Bhardwaj, Adv.

versus

PHOOL SINGH Respondent

Through: Mr. M.K. Sinha, Adv.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This common judgment shall decide the above-noted appeal and cross-appeal filed by the parties under Section 173 of the Motor Vehicles Act, 1988¹, assailing the impugned judgment-cum-award dated 03.12.2018 passed by the learned Presiding Officer, Motor

¹ Act



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Accident Claims Tribunal, South District, Saket Courts, New Delhi². The aforesaid two cross-appeals raise common questions of law and facts and can be conveniently disposed of together.

FACTUAL BACKGROUND:

2. Shorn off unnecessary details, Phool Singh/driver along with the helpers namely Birju Lal and Birbal, met with a motor accident on 06.01.1999 at about 6.30 AM at G.T. Road, Village Mohda, PS Sadar, Ambala, District Ambala, Haryana, when they were changing the tyre of their truck bearing No. DEL-4436, which was hit by the offending bus bearing No. RJ-02P-927 belonging to the Rajasthan State Road Transport Corporation³ and being driven by respondent No.2/Ram Swaroop Ahuja in a rash and negligent manner, which resulted in grievous bodily injuries to the aforesaid three persons. Each of them filed a separate claim petition under Section 166 r/w section 140 of the Act which were initially disposed of by the Presiding Officer, MACT *vide* the judgment-cum-award dated 04.01.2010, thereby, awarding compensation to each of the claimants. However, the appellant/Phool Singh was not satisfied and he instituted MAC. APPL. 641/2010, which was decided by this Court *vide* order dated 21.09.2017. It would be relevant to reproduce the short order passed by this Court, which read as under:-

'JUDGMENT (ORAL)

1. A motor vehicular accident which statedly occurred on 06.01.1999 involving negligent driving of bus bearing registration no. RJ 02P 927 of second respondent/ Rajasthan State Road Transport Corporation (RSRTC), gave rise to three claim petitions

² Tribunal

³ RSRTC



being presented, one of them (suit no. 523/2008) instituted on 17.08.1999 by the appellant herein, he being the driver of truck no. DEL 4436, the others (suit no.525 and 524 of 2008) also instituted on the same date being for compensation on account of injuries suffered by two other persons they being Birju and Birbal respectively. It was the case of the three claimants that they were together, the appellant herein being the driver of the truck. It is stated in the claim petition that the truck had developed some snag in the area of village Mohda, PS Sadar Ambala, Haryana on GT Road and that while the said three persons were busy changing its tyre at about 6.30 A.M. the bus driven in a negligent driving by the second respondent came and hit against a three wheeler parked behind the truck which resulted in the three persons including the claimant/appellant, coming beneath the truck and suffering injuries.

2. The tribunal held inquiry and decided, the three claim cases by common judgment dated 04.01.2010. In the case of the claim petition for and on behalf of the appellant he was granted Rs. 13,000/- as compensation with interest @ 9% per annum, this inclusive of Rs. 10,000/- towards medical expenditure and Rs. 3,000/- towards conveyance.

3. The appellant felt aggrieved with the above-mentioned judgment and came up to seek enhancement of the compensation. He pointed out through the appeal that the injuries suffered in the accident included amputation of the thumb of the right hand besides fracture of seven of his ribs which disrupted his life making him immobile for about three months. His grievance is that tribunal has not only not considered the appropriate award for consequent loss of income but also failed to give any award under the pecuniary heads of loss of amenities, pain & suffering, future expenses etc. In fact, this Court notices that the consequent disability factor on account of amputation of the thumb of a hand also should have been considered but such aspect has not received due attention of the tribunal.

4. It must be observed here that the reasoning set out in the impugned judgment is very cryptic, an approach which cannot be countenanced. This may be demonstrated by extracting the relevant portion of the judgment as under:-

“Compensation in suit no. 523/2008

Claimant Phool Singh also tendered his affidavit Ex.PW-1/A. He proved on record medical bills as Ex.PW1/C (colly) and photo'graphs are Ex.PW1/D-1 and D-2. There is no challenge to his testimony except the suggestion that bills are false and fabricated. In his affidavit he deposed that he suffered multiple injury all over his body. He



deposed that his normal life remained impaired for about six years. He also deposed that he was earning Rs. 4000/- pm and sustained monetary loss of earning Rs. 3 lacs but there is no documentary proof. He only proved medical bills, Ex. PW1/C (colly) which amount to Rs. 8890/- rounded off to Rs. 10,000/-. Counsel for claimant states that he spent Rs. 10,000/- on conveyance. He must have spent some amount on conveyance during his treatment. I award him Rs. 3,000/- on account of conveyance. Total compensation comes to Rs. 13000/- along with interest @ 9% per annum from the date of petition till payment."

5. The appeal was admitted by order dated 20.12.2010. When it is taken up for hearing, there is no appearance for the appellant/claimant.

6. In the foregoing facts and circumstances, the impugned judgment is set aside. The claim case of the appellant is remitted to the tribunal for appropriate inquiry and effective adjudication. The tribunal is reminded of its obligation in law to grant just compensation.

7. The tribunal shall take up the case for further proceedings on 26th October, 2017. Before proceeding further, it must issue notice to the secure the presence of parties. Needless to add, the amount of compensation determined by the previous judgment (which has been set aside), if already paid by the tribunal shall be liable to be adjusted against the award that may be passed by the tribunal.

8. The appeal is disposed of in above terms.'

3. Suffice to state that on the matter getting remanded, the impugned judgment-cum-award dated 03.12.2018 is passed and this time, the grievance of the appellant/Phool Singh is that the learned Tribunal has fell in error in not awarding the compensation to him for loss of his right thumb/amputation of right thumb on the ground that such a disability or amputation has not resulted in any diminished working capacity to the appellant and thereby, only awarding a meagre compensation of Rs. 50,000/- towards amputation.



ANALYSIS & DECISION

4. Having heard the learned counsels for the rival parties and on perusal of the record including the digitized Trial Court Record, it is pertinent to mention that on the present appeal being filed under Section 173 of the M.V. Act, this Court *vide* order dated 07.05.2019, made the following observations:

‘The appellant is aggrieved by the non-award of any quantum on his disability of half of his thumb having been amputated, as a result of the motor vehicle accident. The impugned order has observed that the ability to drive a motor-vehicle, which he was doing earlier, would not be affected by the aforesaid amputation. *Ex-facie*, the said opinion is not acceptable because the thumb is an important body part and has multiple usages. By a driver, the thumb could be used for pressing the car horn.

In the circumstance, the appellants disability needs to be assessed.

At this stage, the learned counsel for the appellant states that the appellant is an illiterate person and not familiar with the complex ways of litigation, therefore, for deficiency in professional services, in not procuring/placing the Certificate of Disability apropos appellants thumb, an appropriate legal proceedings shall be initiated forthwith and not later than two weeks.

Issue notice to respondent no. 1 through ordinary process, Speed Post, approved courier and *dasti*, through counsel as well, returnable on 23.09.2019.’

5. At the outset, this Court cannot agree more with the observations made by the learned Predecessor Judge of this Court. There is no denying the fact that the appellant has drawn from the record that he was employed as a driver, taking due care while driving heavy motor vehicles and having a driving license for the same. The thumb of the petitioner has been amputated and such a disability as per Schedule I Part-II of the Employee’s Compensation Act, 1923, is considered to be 30% loss of earning capacity. The amputation of



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right thumb would certainly impede in normal functioning of the right hand and could hamper vital movements of the hand while driving a motor vehicle. That being the case, the claimant was 43 years of age at the time of accident and in his affidavit in evidence Ex.PW1/A tendered during the course of the evidence, he deposed that he was getting a salary of Rs. 4,000/- per month, whereas, surprisingly, the learned Tribunal discarding the said piece of evidence, granted loss of income quantified at Rs. 40,000/- for six months, which comes to Rs. 6,700/- per month (approximately).

6. *Ex-facie*, the learned Tribunal fell in error in considering the monthly income to be more than Rs. 4,000/-, which was rather claimed in the petition and also substantiated in the affidavit of evidence of the claimant-injured. Therefore, the compensation towards loss of income should be reduced from Rs. 40,000/- to Rs. 24,000/-. As regards the loss of earning capacity, assuming the monthly income to be Rs. 4,000/- since the appellant/claimant was 43 of age, future increase in income can be considered @ 25% in terms of the decision in the case of **National Insurance Company v. Pranay Sethi**⁴, which comes to Rs. 5,000/- (Rs. 4,000/-+ Rs. 1,000/-). Accordingly, the annual income comes to Rs. 60,000/- upon which, the multiplier of '14' is to be made applicable which comes to Rs. 8,40,000/-. The disability has to be reckoned @ 30%, which comes to Rs. 2,52,000/-. While compensation with respect to other heads do not require any modification, the compensation towards amputation is not made out, but it should be for

⁴ (2017) 16 SCC 680



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disfigurement/deformation, which is quantified at Rs.50,000/-. Accordingly, the total compensation is worked out as under: -

	HEADS	AMOUNT
1.	Medical Expenses	Rs. 9,000/-
2.	Pain & Sufferings & Enjoyment of Life	Rs. 70,000/-
3.	Special Diet, Conveyance & Attendant charges	Rs. 40,000/-
4.	Loss of Income	Rs. 24,000/-
5.	Compensation towards disfiguration	Rs. 50,000/-
6.	Loss of earning capacity	Rs. 2,52,000/-
	Total	Rs. 4,45,000/-

7. Lastly, since the claim petition was filed on 17.08.1999 and it took almost nine years for a decision in the matter, this Court is not inclined to interfere with the grant of interest awarded by the learned Tribunal @ 9% per annum. Accordingly, the present appeal is allowed and the appellant/claimant shall be entitled to a total compensation of Rs. 4,45,000/- (Rupees Four Lacs Forty Five Thousand Only) along with interest @ 9% per annum from the date of filing of the petition till realization. The compensation be paid to the appellant/claimant within four weeks from today, failing which, the RSRTC shall be liable to pay penal interest @ 12% per annum from the date of this judgment till realization.

8. The appeal i.e. MAC. APPL. 537/2019 filed by the appellant/Phool Singh is accordingly allowed and MAC. APPL. 46/2023, filed by the appellant/RSRTC, is hereby dismissed. The pending applications also stand disposed of.

DHARMESH SHARMA, J.

JULY 01, 2024/SP

Signature Not Verified

Digitally Signed By: PRAMOD KUMAR VATS
MAC.APP. 537/2019 & MAC. APP. 46/2023
Signing Date: 01.07.2024 16:01:10

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