



2024:0002:2470



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 07 March 2024**
Judgment pronounced on : 02 May 2024

+ **MAC.APP. 152/2021 & CM APPL. 11884/2021, CM APPL. 13391/2021, CM APPL. 10716/2022**

AMIT SAINI Appellant
Through: **Mr. Ravi Kumar, Adv.**

versus

SANDEEP GAUTAM & ANR. Respondents
Through: **None.**

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The appellant has preferred the present appeal in terms of Section 173 of the Motor Vehicles Act, 1988¹ assailing the impugned judgment-cum-award dated 15.02.2019 passed by the learned Presiding Officer, Motor Accident Claims Tribunal (North-02), Rohini Courts, Delhi² in MAC Petition No. 5154/16 titled 'Sandeep Gautam vs. Kallol Ranjan Parida' whereby the learned Tribunal has awarded total compensation of Rs. 12,10,000/- to the respondent No.1/claimant-injured and since the offending vehicle was not insured, it has fastened the liability to pay compensation upon the appellant and driver jointly and severally.

FACTUAL BACKGROUND:

2. Shorn of unnecessary details, the present appeal pertains to the accident which took place on 28.05.2013 at about 12:30 pm at

¹ MV Act

² Tribunal



2024:002:2470



Hamidpur, Delhi, involving appellant's car (alleged offending vehicle) bearing registration No. DL6CD-2761, which was being driven in a rash and negligent manner by respondent No. 2, that hit against Mahindra Champion truck bearing registration no. DL-ILJ 7084³ which was being driven by the respondent No.1/claimant-injured. As a result of the impact, the truck turned turtle from the driver's side and the respondent No.1/claimant-injured, who was 32 years of age, sustained grievous injuries in his right leg in terms of the MLC No. 1581/13 prepared at the Hospital.

3. The offending car was found to be owned by appellant, Mr. Amit Saini, and it was not insured at the time of the accident. In their written statements, the appellants/respondents i.e the driver and the owner disputed the accident as well as the involvement of their car.

4. The following issues were framed by the learned Tribunal *vide* order dated 08.10.2013:-

- "1. Whether the petitioner/injured received injuries in the road side accident occurred on 28.05.2013 at 12:30 pm at Hanurnan Dharam kanta Chowk, Hamidpur, Delhi, due to rash and negligent driving of R-1/driver of offending vehicle bearing no. DL6CD 2761? OPP.
2. Whether the petitioner/injured is entitled for compensation as prayed for, if so then for what extent and from which of the respondents? OPP
3. Relief."

5. Respondent No.1/petitioner examined 3 witnesses – himself as PW-1, Dr. Sumedh from AIIMS as PW-2, and PW-3 Dr. Mukesh Aggarwal (Ortho) Mukesh Orthopedic & Trauma Centre, Narela, Delhi, whereas no evidence was adduced by the appellant, finally

³ Truck



2024:002:1470



leading to an *ex parte* order dated 23.01.2015 passed by the learned Tribunal .

6. The respondent No.1/petitioner who was the injured, namely Sandeep, gave his testimony stating that the collision happened due to the rash and negligent driving of the offending car, and this testimony was uncontroverted and unchallenged by the appellants/respondents. Thus, there was no reason to disbelieve the testimony of the injured and the trial court drew an adverse inference against the appellant/respondent/driver in this regard. Further, mechanical inspection reports dated 03.06.2013 of the alleged offending car and of the truck showed fresh damages consistent with the damages that ordinarily happen in a motor accident. The said reports also remained unrebutted from the side of appellant/respondent No.1 and corroborated the ocular testimony of respondent No.1/petitioner PW1 Mr. Sandeep to the aforesaid extent. Thus, issue No. 1 was decided in favour of the respondent No. 1/petitioner.

7. As regards the quantum of compensation, the claimant injured had deposed to have spent an amount of Rs. 62,714/- on medical expenses, the same was again not challenged by the appellants/respondents. Regarding loss of income, the respondent No.1/petitioner, had deposed in his evidence by way of affidavit that he used to drive his own Truck (Champion) and was earning Rs. 15,000/- p.m. at the time of accident, and due to the crush injuries sustained, he was not in a position to drive any vehicle in future, and thus, he had suffered financial loss. It was brought forth that the claimant injured had sustained permanent disability to the extent of



2024:002:2470



45% in relation to his right lower limb as mentioned in the disability report dated 10.03.14 numbered as PMR (DC)/50001 (Ex. PW2/A) issued by Medical Board of AIIMS that his case was of post traumatic osteomyelitis of right first tarso-metatarsal joint with weakness of right ankle and foot.

8. Learned Tribunal, in view of claimant-injured filing copy of his 10th mark-sheet and for the fact that the minimum wages of a matriculate as well as that of a skilled workman during the period in question were same, reckoned monthly income @ Rs. 9,386/- p.m and a sum of Rs. 1,12,632/- (Rs. 9,386/- x 12) has been awarded in favour of the respondent No. 1/ petitioner under the head of 'Loss on income'.

9. Further, the learned Tribunal under the head of 'loss of income', considered the fact that the driver used to drive his own Champion truck and earned Rs. 15,000/- p.m. and the fact that he had been in and out of hospitals taking treatment from 28.05.13 to 07.07.13. At the other hand, under the head of 'Loss of future income', learned tribunal considered that his disability should be assessed @ 45% due to weakness in right ankle and foot, since such lower limb played a vital role in driving the commercial vehicle. The learned Tribunal was of the view that since respondent No.1/petitioner used to drive commercial vehicle, it would be quite difficult for him to continue doing that apart from facing day to day problems, thus, keeping in view the nature of work and the nature of injuries sustained, his functional disability was taken as 30%.



2024:002:2470



10. Lastly, keeping in view of the medical treatment record of respondent No. 1/ petitioner available on record and the injuries suffered by him, the learned Tribunal awarded a sum of Rs. 1,50,000/- towards 'Pain and suffering'. Further, a sum of Rs. 5000/- was awarded as conveyance charges and Rs. 10,000/- each for special diet and attendant charges to the respondent No.1/petitioner. Thus, compensation awarded under different heads is tabulated as under:

S.No.	Compensation Head	Amount awarded
1.	Loss of Income	Rs. 1,12,632/- (Rs. 9386/- X 12)
2.	Loss of Future Income	Rs. 7,09,632/- (Rs.2,816/- x 140/100 x 12 x 15)
3.	Medical Expenses	Rs. 62,714/-
4.	Pain and suffering	Rs. 1,50,000/-
5.	Loss of general amenities and enjoyment of life	Rs. 1,50,000/-
6.	Conveyance, special diet and attendant charges	Rs. 25,000/-
	Total Compensation Rounded off-	Rs. 12,09,978/- Rs. 12,10,000/-

11. Thus, a total amount of Rs. 12,10,000/- has been awarded to the respondent No.1/petitioner along with an interest @ 9% per annum w.e.f. date of filing of the petition i.e. 01.08.13 till the date of its realization.

12. Since both the appellants/respondents remained *exparte* during the course of inquiry and the driver being the principal tortfeasor and appellant/respondent No. 2 being the owner of the offending vehicle, he was held to be vicariously liable for the acts of the principal tortfeasor, and have been made liable to pay compensation jointly and severally to the respondent No.1/petitioner.



ANALYSIS & DECISION:

13. Having perused the record of the case, this Court finds that the present appeal is bereft of any merits. First things first, there is no challenge to the findings given by the learned Tribunal with regard to involvement of the offending vehicle bearing registration No. DL6CD-2761 in the motor accident that resulted in causing grievous injuries and resultant permanent disability to the respondent/claimant-injured. There is no challenge to the findings recorded by the learned Tribunal that the respondent No.2/driver was not guilty of rash and negligent driving, thereby causing accident. Further, there is no challenge to the quantum of compensation awarded by the learned Tribunal either.

14. Having gone through the reasons accorded by the learned Tribunal, there is nothing to suggest that the amount of compensation awarded under different heads is arbitrary or unconscionable. Learned Tribunal has rather awarded the compensation on a quite moderate scale, probably having regard to the fact that the offending vehicle was not insured.

15. The main plank of the arguments advanced by the learned counsel for the appellant was that he had already sold the offending vehicle to one Mr. Gajender on 19.08.2011, much prior to the motor accident that occurred on 28.05.2013. Indeed, the appellant in the written statement took a specific plea that he had sold the vehicle to one Mr. Gajender S/o Sh. Jogram on 19.08.2011 and it was the driver of Mr. Gajender who was driving the offending vehicle as alleged in



2024:002:1470



the DAR⁴ and he placed on the record a copy of the delivery receipt dated 19.08.2011 besides certified copies of Form No. 29 & 30 suggesting that he had complied with the provisions of Section 50(1) (a) (i)⁵ of the MV Act. Further, it also appears on perusal of copy of order dated 01.08.2013 that the appellant had appeared along with Mr. Gajender who was described as the present owner in possession before the learned Tribunal.

16. However, the appellant took no steps to substantiate his pleas in his defence and failed to prove such documents. It is also evident that the appellant took no steps to move an application for impleading the true owner so much so that he failed to appear during the proceedings and eventually was proceeded *ex parte* vide order dated 23.01.2015 by the learned Tribunal. Since the appellant failed to protect his own legal rights, this Court at appellate stage cannot take cognizance of such material and the liability to pay compensation cannot be fastened upon the buyer of the offending vehicle. So long as the appellant remains the registered owner of the offending vehicle in the record of the RTO, he shall remain liable in respect to any loss or injury that is suffered on account of such vehicle being plied on the road accessible to public. Reference in this regard can be made to decision by the Supreme Court in the case of **Naveen Kumar v. Vijay Kumar**⁶, wherein the Supreme Court interpreted the expression 'owner' in

⁴ Detailed Accident Report

⁵(i) in the case of vehicle registered within the same State, within fourteen days of the transfer, report the fact of transfer, in such form with such documents and in such manner, as may be prescribed by the Central Government to the registering authority within whose jurisdiction the transfer is to be effected and shall simultaneously send a copy of the said report to the transferee;

⁶ (2018) 3 SCC 1



2024:002:1470



Section 2(30)⁷ of the MV Act to be the person under whose name the motor vehicle stands registered and further clarified that the instances where the transfer of vehicle is not registered with an authority the original owner will be liable.

17. Before parting with this case, this Court, however, finds that awarding interest @ 9% is quite exorbitant. The claim petition was filed on 01.08.2013 and it was decided on 15.02.2019, and there is nothing to suggest or attribute any delaying tactics on the part of the appellant since he was proceeded *ex parte*. This Court in several cases has taken a consistent view that rate of interest should ordinarily be @ 7.5% unless and until exceptional circumstances are shown. The compensation in the form of interest is, therefore, liable to be reduced to 7.5%.

18. In view of the foregoing discussion, this Court finds that the learned Tribunal has not committed any illegality or perversity in passing the impugned judgment-cum-award dated 15.02.2019 except for the rate of interest that is reduced to 7.5% from the date of filing of petition till realization.

19. The present appeal along with the pending applications stands disposed of.

DHARMESH SHARMA, J.

MAY 02, 2024

Sadiq

⁷ 2(30) "owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement;