



2024:DHC:5894



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

% **Date of order: 8th August, 2024**

+ **MAC.APP. 651/2019**

SOMBIR

.....Appellant

Through: **Mr.Pankaj Kumar Deval, Advocate**

versus

UNITED INDIA INSURANCE CO LTD& ORSRespondents

Through: **Mr.Sankar Sinha, Advocate for R-1/insurance company**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant appeal under Section 173 of the Motor Vehicles Act, 1988 has been filed on behalf of the appellant seeking the following reliefs:

“(i) It is therefore, most humbly prayed that your lordships be pleased to allow the appeal against the impugned judgment / award in MACT/308/18 dated 06/02/2018 passed by Ld. MACT, North East, Delhi for enhancement of compensation of the appellant / claimant and pleased to enhance compensation of the appellant / claimant.

(ii) It is further prayed that the Trail Court record may also be summoned.

(iii) It is further prayed that the cost of the proceedings be also awarded in favour if the appellants.

(iv) Any other order which this Hon'ble Court may deem fit and



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proper be also passed in favour of the appellant / claimant and against the respondents.”

2. The present appeal has been filed challenging the judgment and award dated 6th February, 2019 (hereinafter as the ‘impugned award’) passed by the learned Motor Vehicles Claims Tribunal (Pilot Court), Karkardooma Courts, Delhi (hereinafter as the ‘Tribunal’) in MAC No. 308/18.
3. The brief facts of the case are that on 29th November, 2017, Mr.Sombir, the appellant/claimant herein, alongwith his friend one Mr.Jeelu, were travelling on a motorcycle bearing registration No. HR-10-Q-7690 from Manauli to their village. The said motorcycle was being driven by the appellant and both of them were wearing helmets. When they reached near KGP Highway, Manauli, Punjab at around 12 P.M., a van bearing registration No. UP-14-BU-2590 (hereinafter as the ‘offending vehicle’), which was being driven by the respondent No. 2 suddenly came from the opposite direction and hit the appellant in such a way where the appellant and his friend fell from the motorcycle and sustained grievous injuries due to the offending vehicle being driven in a rash and negligent manner.
4. Both the injured were immediately rushed to the Civil Hospital, Sonipat, where the appellant was admitted and subsequently, an FIR bearing No. 0486/17 was registered with Police Station Kundli, Sonipat, against the respondent No. 2 for causing grievous injuries to the appellant.
5. Thereafter, the appellant filed a claim petition bearing No. 308/18 before the learned Tribunal, Karkardooma, Delhi seeking compensation for the grievous injuries sustained by him due to the rash and negligent driving



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of the offending vehicle by respondent No.2. Accordingly, by placing reliance on the testimonies of the witnesses and principle of preponderance of probabilities, the learned Tribunal passed an impugned award dated 6th February, 2019 holding that the respondent No.2 was driving the offending vehicle in a rash and negligent manner causing grievous injuries to the appellant and awarded a compensation of Rs.3,46,338/- to the appellant, which is to be recoverable from the respondent No. 1.

6. Aggrieved by the same, the appellant filed the instant appeal.

7. Learned counsel appearing on behalf of the appellant submitted that the learned Tribunal awarded a lesser compensation which is not just and reasonable as the expenditure incurred and the injuries sustained by him are much higher and severe, thereby requiring the enhancement of the compensation.

8. It is submitted that the learned Tribunal erred in taking 15% functional disability in computing the compensation, whereas the actual permanent disability sustained by him is 35%.

9. It is submitted that while awarding the compensation, the learned Tribunal did not consider awarding under the heads of future prospects, disfigurement, travelling allowances and litigation expenses, overlooking the gravity of the injuries sustained by the appellant due to the accident.

10. It is further submitted that the learned Tribunal failed to award appropriate compensation under the heads of loss of amenities and conveyance, thereby lowering the overall compensation awarded.

11. It is submitted that the learned Tribunal erred in deducting 30% on the



initial computed compensation due to the contributory negligence on the appellant's part for not holding a driving license, however, the said deduction is unreasonable as not having a driving license does not amount to contributory negligence and the same cannot be imposed.

12. In view of the foregoing submissions, it is submitted that the instant appeal may be allowed, and impugned award be set aside.

13. *Per contra*, learned counsel appearing on behalf of the respondent No. 1 submitted that the appellants are not eligible for the enhancement of the compensation as there are no documents on record in support of the same.

14. It is submitted to the effect that Dr. Rahul Yogendra Raj/ PW-2 testified that the appellant is capable of doing everyday activities and basis the same, the learned Tribunal determined that the appellant incurred 15% functional disability as against 35% permanent disability while computing the compensation.

15. It is further submitted that the enhancement sought by the appellant under different heads of compensation such as the loss of amenities, conveyance, future prospects etc. cannot be granted as the same has already been covered by the learned Tribunal while assessing the compensation and therefore, enhancement as well as separate allocation of compensation under the aforesaid heads cannot be granted as the same is unreasonable.

16. It is submitted that the learned Tribunal was right in imposing 30% deduction on the initial computed compensation as the appellant was driving his vehicle without a driving license, amounting to contributory negligence.

17. Therefore, in view of the submissions made above, it is submitted that



instant petition, being devoid of any merit, may be dismissed.

18. Heard learned counsel for the parties and perused the record.

19. The appeal is admitted.

20. It is the case of the appellant that given the nature of injuries caused by the respondent No.2 while driving the offending vehicle in rash and negligent manner, the compensation awarded by the learned Tribunal is meagre and the same is required to be enhanced in the instant appeal. Hence, it has been prayed to enhance the impugned award.

21. In rival submissions, the learned counsel for the respondent No. 1 has rebutted the same by stating that the reliefs sought by the appellants are based on no documentary evidence and are not eligible for enhancement of the compensation and therefore, no grounds for appeal arise.

22. Therefore, the question for adjudication before this Court is whether the learned Tribunal erred in awarding an appropriate compensation to the appellant vide impugned award dated 6th February, 2019.

23. Before getting into the merits of the case, it is apposite for this Court to look into the findings recorded by the learned Tribunal in its impugned award. The relevant paragraphs of the same reads as under—

“...17. I have gone through the testimony of the witnesses alongwith complete medical records. Ld. Counsel for respondents argued that as the petitioner failed to prove his income, he is entitled for compensation in accordance with the minimum wages at relevant time. It is further stated that injured has not suffered any monetary loss on account of the injury and therefore, he should not be granted any amount on account of loss of income.



18. PW-1 has stated in his affidavit vide Ex. PW 1/A that at the time of accident, he was 38 years of age and was a businessman and running his own business of vegetables, doing agriculture work and earned Rs. 15,000/- per month. PW-2 Dr. Rahul Yogendra Raj, Sr. Resident, Department of Orthopedics, GTB Hospital, Delhi proved the disability certificate of petitioner which is Ex. PW 1/ 2 deposing that patient is suffering 35 % physical disability in relation to left upper and lower limbs. Due to the disability received, certainly his carrier prospects and life has been affected including his earning capacity. As stated, he was running his own business, he cannot perform his profession keeping in view of nature of work and injury/ age. It may be concluded that the accident/ disability of the petitioner can reduce his efficiency and activities. In the facts and circumstances of the case and nature of disability of the petitioner, I assessed that due to disabilities sustained, his capacity has been reduced restricting him from carrying his work. Considering the evidence on record and facts of the case, the functional disability of the petitioner has been assessed as 15 % in relation to his whole body, in view of judgment of Rai Kumar V/s Aiay Kumar & Ors., (2011) 1 SCC 343.

19. As per Adhar Card of injured, the year of birth of injured is 1989 and accident took place on 29.11.2017 therefore the age of the injured is taken as about 29 years on the date of accident. Petitioner stated that at the time of accident, he was running his own business and earned Rs. 15,000/- per month. No documents has been filed or proved by the petitioner regarding his income therefore in the absence of any records, he is entitled to compensation as per minimum wages Act as applicable to unskilled workman at Haryana while considering his monthly salary as per prevalent rate at relevant time i.e. 29.11.2017 when accident took place. The income of the injured is assessed as per the minimum wages on the date of accident i.e. 29.11.2017 which was Rs. 8,280/- per month for unskilled workman at Haryana. As the petitioner / injured was not



engaged in any regular job or self employed, he is not entitled for any addition towards future prospects.

Accordingly, the loss of income on account of disability/ future earnings is as follows:-

1	Annual income before the accident- (8,280/- X 12)	Rs. 99,360/-
2	Loss of future earnings per annum(15 %)	Rs. 14,904/-
3	Multiplier applicable with reference to age	17
4	Loss of future earnings (17 x 14,904/-)	Rs. 2,53,368/-

20. The Claimant is thus awarded a compensation of an amount of Rs. 2,53,368/- (Rs. 8,280/- X 12 X 17 x 0.15) under the head Future Loss of Income.

21. There is nothing on record in support of the affidavit of PW-1 that injured suffered any loss of earnings from his work. However, with the kind of injuries suffered by him, it can be safely assumed that he would have been under treatment for about five months. He is thus awarded Rs. 41,400/- (Rs. 8,280/- X 5) for five months for Loss of Wages.

22. The petitioner has claimed compensation from respondents. It is also claimed that after the accident, the petitioner could not perform his routine and required attendant/ assistance for his day to day business; he also suffered financial losses due the accident and his family suffered mental pain and agony.

23. While fixing compensation for pain and sufferings, as also for loss of amenities of life, the features like the age and unusual deprivation undertaken by a person in his life generally are to be reckoned. From the overall assessment, his age and the fact that his disability shall remain throughout his life, I assess Rs. 1,00,000/- as compensation towards Pain, Shock and Suffering to the Claimant.

24. The Claimant will have to endure his physical discomfort, disappointment and stress for whole of his remaining life. He is awarded a compensation of Rs. 50,000/- towards Loss of



Amenities and Enjoyment of Life.

25. *Ld. Counsel for petitioner submits that petitioner has spent amount for his treatment but no medical bills has been filed on record. Therefore petitioner is not awarded any amount towards medical bills.*

26. *The Claimant has not filed any document in support of the fact that he had incurred expenses on keeping an attendant, for conveyance and for extra nutritious diet. However, I guess he must have spent some amount for which he is awarded a lumpsum amount of Rs. 30,000/- for Special Diet and for Conveyance Charges.*

27. *Keeping in view the nature of injuries suffered by the petitioner and the fact that he was under constant treatment, he needed an Attendant to look after him and the petitioner is therefore, entitled to attendant charges. Petitioner has not filed any record to show that he has received help of special attendant however, some family member must have been attending him. A victim of accident has to be compensated in terms of money even if gratuitous services are under by a family members. In Delhi Transport Corporation and Anr. v. Lalita AIR 1981 Delhi 558, a Division Bench of Hon'ble High Court held that there cannot be any deduction if domestic help is obtained from a family member. This judgment was again relied upon by the Hon'ble High Court of Delhi in the case of Narayan Bahadur V. Sumeet Gupta and Anr., MAC APP. No. 762/11 dated 04.07.12. In the circumstances, where the injured had suffered permanent disability, it is deemed fit that a lump sum of Rs. 20,000/- be awarded as compensation towards Attendant charges.*

28. *Keeping in view the facts and circumstances, I consider the following amount to be the just compensation to the Claimant:-*

1	<i>Future Loss of Income</i>	<i>Rs. 2,53,368/-</i>
2	<i>Towards Pain Shock & Suffering</i>	<i>Rs. 1,00,000/-</i>
3	<i>Towards Loss of Amenities & Enjoyment of Life</i>	<i>Rs. 50,000/-</i>



4	Towards Servant /Attendant Charges	Rs. 20,000/-
5	Towards Conveyance & Special diet	Rs. 30,000/-
6	Towards medical bills	Rs. 0/-
7	Towards loss of wages	Rs. 41,400/-
	Total=	Rs. 4,94,768/-

Ld. counsel for insurance company vehemently argued that due to the contributory negligence of the petitioner, he is not entitled for the compensation and claim petition should be dismissed. The contributory negligence of petitioner is proved in view his testimony as during cross examination, the witness has admitted that he did not have any DL to drive the bike. Keeping in view of circumstances of the case, the 30 % of the total compensation amount is deducted towards contributory negligence. The petitioner is accordingly entitled for compensation of Rs. 3,46,338/- from the respondents.

I accordingly award an amount of compensation of Rs. 3,46,338/- in favour of the Claimant and against Respondents.”

24. Upon perusal, while addressing the issue of compensation, the learned Tribunal relied upon the circumstantial difficulties endured by the appellant due to the severity of the injuries as well as the disability certificate placed on record for assessing the compensation to be awarded to the appellant under necessary heads. With regard to the same, the learned Tribunal has determined the functional disability as 15% and computed the compensation as Rs.4,94,768/-. However, the said compensation has been reduced to Rs.3,46,338/- by imposing 30% deduction on the initial computed compensation as the appellant was not holding a driver's license thereby amounting to contributory negligence.



25. In light of the same, the compensation of Rs.3,46,338/- has been awarded to the appellant, which is to be recoverable from the respondent No. 1 along with an interest @ 9% from the date of filing of the claim petition till its realization.

26. It is the case of the appellant that while computing the loss of future income, the learned Tribunal has erred in taking 15% as functional disability, when the appellant has suffered 35% permanent disability and that the learned Tribunal has failed to award compensation for the loss of future prospects.

27. For assessing the compensation for the loss of future income and future prospects, it is imperative that this Court ascertain the impact of the disability on his earning capacity.

28. In the case of ***Raj Kumar vs. Ajay Kumar & Anr. (2011) 1 SCC 343***, the Hon'ble Supreme Court of India held that while ascertaining the compensation for loss of future income, it is imperative to assess the impact of the claimant's permanent disability on his earning capacity and the said compensation must be just and reasonable. The relevant part of the judgment is reproduced hereunder –

“8. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of



earning capacity, arising from a permanent disability will be different from the percentage of permanent disability.

Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation

(see for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. MANU/SC/0777/2010 : 2010(10) SCALE 298 and Yadava Kumar v. D.M., National Insurance Co. Ltd. MANU/SC/0657/2010 : 2010 (8) SCALE 567.

9. 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.

10. 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 ability (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.”

29. It is crucial to take notice of the PW-2's deposition, wherein it was testified that the appellant has endured 35% permanent disability in his left lower and upper limbs and that he will be able perform his daily activities, however, it is also stated that he might face discomfort in sitting and



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squatting up and down the stairs. During the cross-examination, PW-2 has reiterated the discomfort he will be facing in sitting and squatting activities and has further rejected the suggestion of appellant not being functionally disabled.

30. At this stage, this Court finds it pertinent to take notice of the nature of the appellant's work which is running his own business of vegetables and doing agricultural work.

31. As per the disability certificate issued by the GTB Hospital, the appellant has 35% permanent disability in his left lower and upper limbs. However, taking into consideration the nature of work and further relying on the case of ***Raj Kumar vs. Ajay Kumar & Anr. (supra)***, the appellant is restricted in discharging his work compared to his previous self, thereby impacting his earning capacity. In light of the PW-2's deposition as well as the appellant's nature of work, this Court is of the view that the learned Tribunal was right in ascertaining 15% as functional disability while computing loss of future income as he was not completely restricted exercising his work, but only to an extent, hence the same has been reasonably awarded.

32. It is also a contention of the appellant that the learned Tribunal has erred in not awarding compensation for the loss of future prospects based on the sole reason that the appellant is not self-employed or has a regular job.

33. In the case of ***Hem Raj vs. The Oriental Insurance Company Limited and Ors., (2018)15 SCC 654***, the Hon'ble Supreme Court of India was of the view that while awarding compensation for loss of future



prospects, there cannot be distinction where there is positive evidence of income and where minimum income is determined on guess work and that both these situations are on equal footing.

34. It has been held in catena of cases of the Hon'ble Supreme Court as well as the High Courts that in case of permanent disability, the claimant is entitled to both future loss of income and future prospects.

35. In light of the aforementioned case and settled law, this Court is of the opinion that the appellant, who is an unskilled labor and a victim of motor vehicle accident is entitled to future prospects irrespective of earning a notional income.

36. Since the appellant was 29 years of age at the time of accident, relying on the principles laid down in *National Insurance Company Limited v. Pranay Sethi & Others*, (2017) 16 SCC 680, this Court grants an additional 40% of the annual income to the appellant for future prospects.

37. With respect to the enhancement of compensation for loss of amenities and conveyance, it is pertinent to mention the case of *K. Suresh vs. New India Assurance Co. Ltd. & Anr.*, (2012) 12 SCC 274, wherein the Hon'ble Supreme Court observed that while awarding compensation under non-pecuniary expenses, the Courts may not be able to ascertain a correct value of compensation as it is based on numerous factors affecting the daily life of the appellant. The relevant paragraph is as under –

“10. It is noteworthy to state that an adjudicating authority, while determining quantum of compensation, has to keep in view the sufferings of the injured person which would include his inability to lead a full life, his incapacity to enjoy the



normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned. Hence, while computing compensation the approach of the tribunal or a court has to be broad based. Needless to say, it would involve some guesswork as there cannot be any mathematical exactitude or a precise formula to determine the quantum of compensation. In determination of compensation the fundamental criterion of “just compensation” should be inhere.”

38. In the instant case, while determining the compensation under the loss of amenities and conveyance, learned Tribunal has considered the age as well as the physical discomfort of the appellant in leading a daily life and his difficulty in movement. The objective of awarding compensation under these heads is to ensure that the appellant is being awarded a just and reasonable award for compensating the circumstantial difficulties in duration and furtherance of his life. Therefore, the learned Tribunal has rightly considered the factors affecting his life due to the accident while awarding compensation for the loss of amenities and conveyance. Moreover, additional compensation sought by the appellant has already been covered by the learned Tribunal.

39. It is also pertinent to mention that while passing the impugned award, the learned Tribunal deducted 30% of the initial computed compensation for holding appellant accountable for the contributory negligence for not having a driver's license.

40. This Court has previously passed an order dated 1st April, 2019 in ***United India Insurance Co. Ltd. Vs. Sombir & Ors., MAC APP 421/2019,***



bearing the same parties and facts, wherein it was observed that mere absence of driving license does not amount to contributory negligence on the part of appellants, even though it is a punishable offence under the Motor Vehicles Act, 1988 and therefore, refrained from going into the legality of the same.

41. In light of this, this Court is of the opinion that the 30% deduction levied by the learned Tribunal is to be set aside.

42. Upon due consideration of the aforementioned reasoning, this Court lays down the amount of compensation under different heads, after making the requisite corrections –

S.No	Heads of Expenses	Amount
1.	Future Loss of Income	Rs. 2,53,368/-
2.	Towards Pain, Shock and Suffering	Rs. 1,00,000/-
3.	Towards Loss of Amenities & Enjoyment of Life	Rs. 50,000/-
4.	Towards Servant/ Attendant Charges	Rs. 20,000/-
5.	Towards Conveyance and Special Diet	Rs. 30,000/-
6.	Towards Loss of Wages	Rs. 41,400/-
7.	Towards Future Prospects	Rs. 1,39,104/- [Rs. 99,360 (annual income) + Rs. 39,744 (40% of annual income)]



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	TOTAL	Rs. 6,33,872/-

43. Considering the observations made hereinabove, following directions are being passed by this Court:

- a. This Court has held that the learned Tribunal erred in not awarding compensation for the future prospects. Accordingly, a sum of Rs. 6,33,872/- has been granted by this Court to the appellant for the future prospects.
- b. This Court set asides the finding of the learned Tribunal whereby it reduced the compensation amount by 30% due to the contributory negligence of the appellant.
- c. It is held that the learned Tribunal erred in determining contributory negligence on the part of the appellant. Accordingly, the total compensation awarded to the appellant is calculated at **Rs. 6,33,872/-**.

44. In view of the foregoing discussions of facts and law, the impugned award dated 6th February, 2019 passed by the Motor Vehicles Claims Tribunal (Pilot Court), Karkardooma Courts, Delhi in case bearing MAC No. 308/18 is modified in aforesaid terms. The instant appeal stands partly allowed.

45. The respondent no. 1 is directed to pay the compensation amount of Rs. 6,33,872/-, to the appellant within thirty days of receipt of this order, after deducting the amount already paid/deposited.



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46. Accordingly, the instant appeal is disposed of along with the pending applications, if any.

47. The judgment be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

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dy/SM/AV