



2024:DHC:5895



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

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

+ **MAC.APP. 655/2019**

JEELU

.....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 allow the appeal of the appellant / claimant to enhance the compensation in above case judgment / award in MACT/309/18 dated 06/02/2018 passed by Ld. MACT, North East, Delhi.

(ii) It is further prayed that the Trial 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 proper be also passed in favour of the appellant / claimant and against the respondents.”

Signature Not Verified

Digitally Signed
By: DAMINI YADAV
Signing Date: 21.08.2024
19:23:52

MAC.APP. 655/2019

Page 1 of 14



2024:DHC:5895



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. 309/18.

3. The brief facts of the case are that on 29th November, 2017, Mr. Jeelu, the appellant/claimant herein, along with his friend one Mr. Sombir, were travelling on a motorcycle bearing registration no. HR-10-Q-7690 from Manauli to their village. The said motorcycle was being driven by his friend 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 they were admitted, and the appellant was later shifted to the GTB Hospital upon reference. 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. 309/18 before the learned Tribunal, Karkardooma, Delhi seeking compensation for the grievous injuries sustained by him due to the rash and negligent driving of the offending vehicle by respondent no. 2. Accordingly, by placing



2024:DHC:5895



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. 1,54,840/- 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 severe, thereby requiring the enhancement of the compensation.

8. It is submitted that the learned Tribunal erred in not taking the permanent disability of the appellant into consideration in computing the compensation, whereas the actual permanent disability sustained by the appellant is 7%, thereby calculating the loss of earning capacity incorrectly.

9. It is submitted that, while awarding the compensation, the learned Tribunal did not consider awarding under the heads of future prospects, loss of amenities, disfigurement, travelling allowances, lack of marriage prospects 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 attendant's charges, thereby minimising the overall compensation awarded.



2024:DHC:5895



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

12. *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 reliefs sought.

13. It is submitted that the learned Tribunal was correct in determining no functional disability while assessing the compensation as the appellant has incurred merely 7% permanent disability in his left lower limb.

14. 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.

15. Therefore, in view of the submissions made above, it is submitted that instant petition, being devoid of any merit, may be dismissed.

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

17. The appeal is admitted.

18. 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.



19. 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. Hence, it is prayed to dismiss the instant appeal.

20. 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.

21. Before going into the merits of the case, it is apposite for this Court to look into the findings recorded by the learned Tribunal in the impugned award. The relevant part of the same reads as under:

“...30. I have gone through the testimony of the witnesses alongwith complete medical records. It is deposed that due to the accident, he fell down on the road and sustained grievous injuries all over his body; he was immediately taken to Civil Hospital, Sonipat where his MLC was prepared; thereafter he was taken to GTB Hospital, Dilshad Garden, Delhi. Petitioner deposed that he sustained multiple injuries due to the accident and he is suffering 07 % physical disability in relation to left lower limb and in support of contentions, he has examined the witness i.e. Dr. Manoj BM, Sr. Residents, Department of Orthopaedics, GTB Hospital, Delhi as PW-2 and proved the disability certificate Ex. PW 2/1. After perusal of the disability certificate of the petitioner and physical appearance of the injured, it appears that petitioner is not suffering from any disability in view of judgment of Rai Kumar V/s Aiay Kumar & Ors., (2011) 1 SCC 343. The petitioner claimed that at the time of accident, he was a businessman and running his own business of vegetables, doing agriculture work and earned Rs. 15,000/- per month. No document has been filed by the petitioner regarding his income therefore petitioner 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.

31. I have gone through the medical records of the petitioner. There is nothing on record in support of the affidavit of PW-1 that he 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 three months. He is thus awarded Rs. 24,840/- (Rs. 8,280/- X 3) for three months for Loss of Wages.

32. The petitioner has claimed amount towards compensation from the respondent. 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.

33. 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, I assess Rs. 1,00,000/- as compensation towards Pain, Shock and Suffering to the Claimant.

34. Ld. Counsel for petitioner submits that petitioner has spent amount for his treatment but no medical bills has been filed on record by the petitioner therefore petitioner is not awarded any amount towards medical bills.

35. 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. 10,000/- for Special Diet and Rs. 10,000/- for Conveyance Charges.

36. 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 injury, it is deemed fit that a lump sum of Rs. 10,000/- be awarded as compensation towards Attendant charges.

37. 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. 0/-</i>
2	<i>Towards Pain Shock & Suffering</i>	<i>Rs. 1,00,000/-</i>
3	<i>Towards Servant / Attendant Charges</i>	<i>Rs. 10,000/-</i>
4	<i>Towards Conveyance & Special diet</i>	<i>Rs. 20,000/-</i>
5	<i>Towards medical bills</i>	<i>Rs. 0/-</i>
6	<i>Towards loss of wages (three months)</i>	<i>Rs. 24,840/-</i>
	<i>Total=</i>	<i>Rs. 1,54,840/-</i>

I accordingly award an amount of compensation of Rs. 1,54,840/- in favour of the Claimant and against Respondents.”



22. 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 computed the compensation for Rs.1,54,840/-.

23. In light of the same, the compensation of Rs.1,54,840/- 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.

24. It is the case of the appellant that the learned Tribunal erred in not allotting any compensation for loss of future income as it was of the view that the appellant incurred no functional disability.

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

26. In the case of **Raj Kumar vs. Ajay Kumar & Anr. (2011) 1 SCC 343**, the Hon'ble Supreme Court 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.”



27. Further, in the case of ***Sandeep Khanuja v. Atul Dande and Anr., (2017) 3 SCC 351***, the Hon'ble Supreme Court of India emphasised that in order to assess the compensation, it is imperative for the Court to analyse the adverse effect of permanent disability on the claimant's earning capacity. The relevant portion is as under –

“15. The crucial factor which has to be taken into consideration thus is to assess whether the permanent disability has any adverse effect on the earning capacity of the injured. We feel that the conclusion of the MACT on the application of aforesaid test is erroneous. A very myopic view is taken by the MACT in taking the view that 70% permanent disability suffered by the Appellant would not impact the earning capacity of the Appellant. The MACT thought that since the Appellant is a chartered accountant he is supposed to do sitting work and therefore his working capacity is not impaired..... A person who is engaged and cannot freely move to attend to his duties may not be able to match the earning in comparison with the one who is healthy and bodily able. Movements of the Appellant have been restricted to a large extent and that too at a young age.”

28. It is testified by Dr. Manoj BM/ PW-2 that the appellant has incurred 7% permanent disability in his left lower limb, however, he failed to lay emphasis on the impact of such disability on the appellant's daily activities. In absence of the same, the learned Tribunal relied upon the tests laid down in ***Raj Kumar vs. Ajay Kumar & Anr. (supra)*** in ascertaining that the appellant has no functional disability. This Court finds no reason to interfere with the learned Tribunal's reasoning and therefore, compensation for future loss of income and future prospects cannot be awarded.



29. Moreover, the appellant sought for additional compensation for loss of amenities, disfigurement, travelling allowance, marriage prospects and litigation expenses as well as for increment in compensation for the attendant's charges.

30. 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 of India 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 inhered.”

31. In the instant case, while determining the compensation under the attendant's charges, the learned Tribunal has taken into consideration the amount of help that he may have received from his family members in assisting him during his treatment and has rightly



awarded the compensation for the same. Moreover, with no proof of record and the additional compensation sought by the appellant already being covered by the learned Tribunal, no further allocation of compensation is necessary.

32. Upon due consideration of the aforementioned reasoning, this Court lays down the amount of compensation to be awarded under different heads, without interfering with the learned Tribunal's award-

S.No	Heads of Expenses	Amount
1.	Towards Pain, Shock and Suffering	Rs. 1,00,000/-
4.	Towards Servant/ Attendant Charges	Rs. 10,000/-
5.	Towards Conveyance and Special Diet	Rs. 20,000/-
6.	Towards Loss of Wages	Rs. 24,840/-
	TOTAL	Rs.1,54,840/-

33. Considering the observations made hereinabove, this Court does not find any error or illegality in the impugned award and it is held that the learned Tribunal rightly adjudicated the claim petition.

34. 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. 309/18 is upheld.

35. The respondent no. 1 is directed to pay the compensation amount of Rs. 1,54,840/-, to the appellant withing thirty days of receipt of this order, after deducting the amount already paid/deposited.



2024:DHC:5895



36. Accordingly, the instant appeal stands dismissed along with pending applications, if any.

37. The judgment be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 8, 2024
dy/SM/AV

Signature Not Verified

Digitally Signed
By: DAMINI YADAV
Signing Date: 21.08.2024
19:23:52

MAC.APP. 655/2019

Page 14 of 14