



2024:DHC:9763



\$~17

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 13th December, 2024***+ **MAC.APP. 235/2022****HAKEEM AHMED KHAN**

S/o Sh. Ismail Khan

R/o H.No.760, Gali No.24,

Vijay Park, Maujpur, Delhi.

.....Appellant

Through: Mr. S.N. Parashar, Advocate.

versus

1. **LOKESH KUMAR**

S/o Ombir Singh

R/o Village Tayabpur, P.S, Shikarpur,

District Bulandshahr, U.P.

2. **MANAGER**

DTC Hasanpur Depot, New Delhi.

3. **UNITED INDIA INS. CO. LTD.**

Kasturba Gandhi Marg,

Connaught Place,

New Delhi.

.....Respondents

Through: Ms. Suman Bagga, Advocate.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****JUDGMENT (oral)**

1. An Appeal under Section 173 of the *Motor Vehicle Act, 1988* has been filed on behalf of the *Appellant/Injured for enhancement of compensation* in the sum of Rs.20,34,440/- along with interest @ 8% per



2024:DHC:9763



annum, has been *granted vide Award dated 21.05.2022*.

2. The *sole ground* on which the enhancement of compensation is sought is that the injured suffered an amputation of his leg. There was no contributory negligence on his part despite which 50% of the compensation amount has been reduced by attributing *contributory negligence* to the Appellant.

3. It is argued that the *sole negligence* was of the driver of the offending Bus who opened the automatic front door of the bus and while the injured was de-boarding, the bus kept on moving resulting in the injured coming under the bus and his leg getting amputated. It is submitted that no negligence can be attributed to the injured as it was the driver who should have taken due care and caution to station the bus while a passenger was de-boarding. It is, therefore, submitted that the contributory negligence of 50% as attributed to the injured, may be recalled.

4. *Learned counsel on behalf of the Insurance Company* has argued that the learned Tribunal in its well reasoned Award, had observed that as per the testimony of the injured himself, he was trying to de-board from a moving bus and therefore, 50% contributory negligence has been rightly attributed to the injured. It is further argued that the circumstances in fact show that 80% negligence was that of the injured. He has already been given enough benefit and the Award does not merit any interference.

5. **Submissions heard.**

6. *Briefly stated*, on 09.07.2018 the injured boarded a DTC Bus bearing No. DL1PC0639, Route No.165 from Gokalpuri Bus Stand for going to GTB Hospital. According to the Appellant, the driver did not stop the bus at GTB Hospital Bus Stand. At about 06:30 P.M when the bus reached near



2024:DHC:9763



Metro Station, Petrol Pump, Dilshad Garden, the Appellant/Injured was in the process of de-boarding, when his one foot was on the last foot step of DTC bus while the other was on the road, when the driver suddenly drove the bus in a rash and negligent manner without any indication or blowing horn and observing traffic rules. Consequently, the injured fell on the road and left front wheel of the DTC bus ran over his right foot which got crushed which ultimately resulted in amputation of his left lower limb. FIR No.397/2018 under Section 279/338 IPC P.S. SeemaPuri was registered. After due investigations, Chargesheet was filed in the Court.

7. The Claim Petition was filed by the Appellant in which compensation in the sum of Rs.20,34,440/- (after deducting 50% as contributory negligence attributable to the injured) along with interest @ 8% per annum was granted to the Appellant.

8. The *sole ground of challenge* to the impugned Award is that the Appellant had been wrongly attributed 50% contributory negligence to the Appellant.

9. The moot question which now arises is to ascertain the true circumstances in which the accident took place and also whether any contributory negligence can be attributed to the Appellant/injured. It would be pertinent to refer to the testimony of PW2, Hakeem Ahmed Khan the injured who deposed as under :

“I say that on 09.07.2018 at about 6.00 pm, I boarded the DTC Bus No. DL 1PC 0639 route no. 165 from Bus Stand Gokal Puri, for going to GTB Hospital. I was to get down at Bus Stand GTB Hospital, but driver of the DTC bus did not stop the bus at GTB Hospital as he was doing competition with other bus. At about 6.30 pm, when the bus reached near Metro Station, Petrol Pump, Dilshad



2024:DHC:9763



Garden, PS Seemapuri, Delhi and I was in the process of de-boarding the bus and my one foot was on foot step of DTC Bus and other foot was on the road, in the meanwhile the driver of bus suddenly drove and moved the bus in a rash and negligent manner, without any indication, without blowing any horn and without observing traffic rules. As a result of this I fell down on the road and left front wheel of the DTC bus ran over my right leg, due to which I sustained crush foot (RT) side and other multiple injuries. I was immediately taken to GTB Hospital, Dilshad Garden, Delhi by PCR Van, where my MLC No. B-3418/22/18 was prepared by doctor, where I hospitalized from 09.07.2018 to 16.07.2018, where during the course of treatment my right leg blow knee amputated on 10.07.2018 by Dr. Rohit, Dr. Suhil & Dr. Shiv. I took my medical treatment for a period of one year as an outdoor patient from various hospitals.”

10. The injured in his cross-examination admitted “*it is correct that I had told the driver to stop the bus, but he did not stop the bus due to a turn as there was no Bus Stop*”.

11. From the testimony of the injured himself, it is evident that he had to get off at GTB Bus Stop, but the driver did not stop the bus and it moved ahead. At the turn near Metro Station Dilshad Garden, while the bus was moving, the injured was de-boarding the bus, but when he was midway, the driver suddenly moved the bus at a high speed because of which he fell and suffered crush injuries.

12. Certain pertinent facts which emerge is that it was admittedly a running bus. The doors of the bus are automatic, the control button of which is with the driver. That the door was closed and was opened for letting the injured get off, is made out from the Written Statement filed jointly by the



2024:DHC:9763



Driver/Owner who had stated that the injured himself pressed the button to open the door for de-boarding the bus. It is common knowledge that the control of the automatic button for operating the two doors in front and back, is not accessible to the passengers, but is in the control of the driver. The circumstances which thus, emerges is that the driver even though did not stop the bus, but opened the automatic door for the injured to de-board. Clearly, it is a clear case of negligence on the part of the driver.

13. However, it cannot be overlooked that despite knowing that it is a moving bus, the Appellant tried to de-board and in the process fell and suffered injuries. Looking at the totality of circumstances, it is hereby concluded that 30% negligence is attributable to the injured, while 70% to the Driver of the offending bus.

14. The total compensation calculated was Rs.40,68,880/- out of which Rs. Rs.20,34,440/-(being 50%) was awarded to the Appellant. As has been observed, the Appellant has been attributed 30% of contributory negligence, thus, the Appellant is entitled to compensation of Rs.28,48,160/- (i.e. 70% of Rs.40,68,800/-).

Relief

15. In view of above, a **compensation of Rs.28,48,160/- along with interest @ 8% per annum**, is hereby awarded to the Appellant from the date of filing of the Petition till its realization. The enhanced compensation be deposited with the Tribunal within four weeks, by respondent No.3, which be disbursed to the Appellant in terms of the impugned Award dated 21.05.2022.



2024:DHC:9763



16. The Appeal is accordingly disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 13, 2024
va