



2024:DHC:8960



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of decision: 14th November, 2024*+ **MAC.APP. 407/2022**

SMT. LAD KUMARIAppellant
Through: Mr. Pankaj Gupta, Advocate.

versus

SANDEEP KUMARRespondent No.1

DEEPAK SABHARWALRespondent No.2

THE NEW INDIA ASSURANCE
CO. LTDRespondent No.3
Through: Mr. J.P.N. Shahi Advocate for R-3.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. *An Appeal under Section 173 of the Motor Vehicle Act, 1988*
has been filed for enhancement of the compensation on the following
grounds:-

- (i) that 20% has been deducted erroneously from the compensation on account of contributory negligence of the injured;
- (ii) the Appellant was working as a Conductor but was declared unfit by the Medical Board of DTC and terminated from job and her loss of future income has not been granted; and
- (iii) the compensation under the head of Non Pecuniary

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Compensation is inadequate.

2. *Learned counsel on behalf of the Insurance Company* submits that the deduction of 20% towards contributory negligence of the injured may be considered afresh. So far as enhancement on other grounds is sought, it is submitted that the compensation has been considered fairly and does not warrant any interference.

3. **Submissions Heard and record perused.**

4. The *brief facts* are that Appellant Smt. Lad Kumari was going from her residence to her place of work i.e. DTC Depot, Rajghat, Delhi for which she took a lift from a motorcyclist bearing *Registration No. DL-5SCB-8253*. The Appellant claimed that the motorcycle was being driven with due care and caution at normal speed. Unfortunately, when they took a U-Turn before Rajghat Depot a, Tata 407 Tempo bearing Registration No. DL-1L-AA-2555 (*offending vehicle*), which was being driven by Respondent No.1/Sh. Sandeep Kumar in rash and negligent manner, hit the motorcycle from the side with great force as a result of which the injured fell and suffered grievous injuries. *FIR No. 007/2021*, under Section 279/338 IPC 1806 was registered at Police Station Darya Ganj, Delhi. After investigation, the Charge Sheet was filed against the Tempo driver/Sandeep Kumar-Respondent No.1.

Contributory Negligence:

5. *The learned Tribunal* in the Impugned Award observed that the Appellant injured Lad Kumari in taking a lift from a motorcyclist and not disclosing that he was driving his motorcycle in the wrong carriageway, has contributed towards the accident and thereby held



her responsible for contributory negligence and 20% of the compensation amount has been deducted accordingly.

6. Pertinently, the injured was a pillion rider and cannot be held responsible for any alleged negligence of the motorcyclist, though the same has also not been established. ***Whatever be the conduct of the motorcyclist, the negligence cannot be attributed to the pillion rider.***

7. Accordingly, the learned Tribunal fell in error in holding the injured responsible for 20% contributory negligence.

8. ***This aspect, therefore, is modified and it is held that 20% is not liable to be deducted towards the contributory negligence.***

Loss Of Income:

9. The counsel for the Appellant has argued that the injured was working as a Conductor in DTC on contractual basis and getting a salary of Rs.21,000/- per month. However, because of the injuries suffered by her in the accident, she was unable to join the Service and suffered loss of Income. She was declared unfit by the Medical Board for the post of Conductor in DTC. The Certificate dated 15.03.2022, Ex. PW-1/5, is issued by DTC. Though that Certificate has been proved by the Appellant, but there is nothing mentioned in the Certificate to explain on what grounds she has been found unfit.

10. This is pertinent in the light of injuries that were suffered by her. As per the MLC prepared by Doctor RML Hospital, she was found to have suffered abrasion over nose, tenderness over right lower limb and tenderness over right chest. Her *Discharge Summary Ex. PW-1/7* reflects that she had suffered *fracture of bimalleolar of right ankle* which was certified as grievous in nature. She underwent open



reduction and internal fixation –implants and rods in bone. The Medical record shows that she remained admitted in the hospital from 16.08.2021 till 23.08.2021.

11. From the medical record as produced on record, it can be held that the injured may have remained under treatment till about August, 2021. The accident had taken place on 08.01.2021. Her period of treatment can reasonably be taken as eight months. She has been given a loss of salary for only 3 months ***and the same should have been granted for the entire period of 8 months.***

12. The petitioner had claimed that she was getting a salary of Rs.21,000/- per month but no document could be produced by her to prove the salary. In the circumstances, the learned Tribunal has rightly taken the salary of the injured as Rs.18,797/- per month.

13. Thus, the loss of salary is granted for a period of eight months i.e. 18,797/- X 8 = 1,50,376/-.

Loss Of Future Earning Capacity:

14. The learned counsel for the injured has also argued that because of her physical disability, she was unable to resume her job and she is entitled to loss of future prospects. However, the only document produced is the Certificate *Ex.PW1/5* issued by DTC wherein it is only stated that she was found unfit for the job of the Conductor in DTC. There are no details whatsoever given of the kind of disability suffered. No cogent evidence whatsoever has been produced in regard to Permanent Disability.

15. Pertinently, her testimony as PW-1, is also silent on this aspect. The nature of injuries is fracture of bimalleolar of right ankle. It is not



the kind of injury which can be held to be leading to any kind of Permanent Disability unless there was some formal proof of the same. Admittedly, the Petitioner has not gotten herself assessed from any Medical Board. Thus, in the absence of any evidence, no compensation can be granted on account of permanent disability.

Non-Pecuniary Heads:

16. Learned counsel for the Appellant has further submitted that the compensation granted under non-pecuniary may be enhanced. Only a sum of Rs1,200 has been granted for medical treatment. The appellant may not have been able to produce all the Bills or her treatment may have taken place in Government hospital, but she may have incurred expenses for which she may not have been able to preserve the Bills. Looking at the nature of injuries and the prolonged treatment, the ***Medical Treatment is enhanced to Rs. 10,000/-***.

17. For the same reasons, the Conveyance charges and the Special Diet charges are ***enhanced to Rs.25,000/- each***.

18. The compensation of Rs.30,000/- has been granted on account of pain and suffering. ***Considering the nature of injury and also the period of treatment, it is enhanced to Rs.1,00,000/-***.

Relief:

19. The compensation amount is accordingly enhanced as under:-

NAME OF HEAD	AMOUNT GRANTED	AMOUNT MODIFIED
Expenditure on Treatment	Rs. 1,200/-	Rs. 10,000/-
Expenditure on Conveyance	Rs. 10,000/-	Rs. 25,000
Expenditure on Special Diet	Rs. 10,000/-	Rs. 25,000
Loss of Income	Rs. 56,391 (18,797 X 3 months)	Rs. 1,50,376/- (18,797/- X 8 months)



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Mental, Physical Shock, Pain & Suffering	Rs. 30,000/-	Rs. 1,00,000/-
Total	Rs. 1,07,591	Rs. 3,10,376/-
Less 20% towards Contributory Negligence	Rs. 86,073 [1,07,591-21,518 (i.e. 20% of total)]	N/A
Total Compensation	Rs. 86,500/- (Rounding off Rs. 86,073/-)	Rs. 3,10,500/- (Rounding off Rs. 3,10,376/-)

20. The Insurance Company is hereby directed to pay the ***enhanced compensation amount in the sum of Rs. 3,10,500/-*** along with interest at the rate of 9% per annum, from the date of Claim till the date of disbursement, which be done in terms of the Award.

21. The enhanced compensation amount be deposited within four weeks with the Tribunal.

22. The Appeal is disposed of accordingly, along with pending application(s) if any.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 14, 2024
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