



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

% **Judgment reserved on : 29 April 2024**
Judgment pronounced on : 01 July 2024

+ **MAC.APP. 368/2017**

YASHPAL

..... Appellant

Through: **Mr. Ravi Sabharwal and Ms. Khushboo, Advocates.**

versus

RAKESH KUMAR & ANR

..... Respondents

Through: **Mr. Anurag Ahluwalia, CGSC with Mr. Abhigyan Siddhant, GP for R-2/UOI.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The appellant/claimant-injured has preferred this statutory appeal under Section 173 of the Motor Vehicles Act, 1988¹ assailing the quantum of compensation awarded to be on the lower side *vide* impugned judgment-cum-award dated 13.10.2016 passed by the learned Presiding Officer, Motor Accident Claims Tribunal, Dwarka Courts, New Delhi², whereby the learned Tribunal awarded a sum of Rs. 7,16,755/- as compensation to the claimants along with interest @ 10% per annum from the date of filing of the DAR i.e. 04.03.2011 till realization.

¹M.V. Act



FACTUAL BACKGROUND:

2. Succinctly put, it was on the unfortunate day of 03.12.2010 when at about 5:50 P.M., the appellant/injured-claimant, aged about 19 years, while going towards his house from Janta Vihar Colony, New Delhi on his bicycle, was hit by a CRPF³ bus bearing registration No. HR-55L-1562 (*hereinafter referred to as the 'offending vehicle' for brevity*), which was being driven by respondent No.1/Rakesh Kumar allegedly in a very rash and negligent manner, resulting in grievous injuries to him. After a prolonged medical treatment, the appellant injured-claimant filed a claim petition on 04.03.2011 under Section 160 of the M.V. Act seeking compensation to the tune of Rs. 10 Lacs.

THE IMPUGNED JUDGMENT-CUM-AWARD:

3. The learned Tribunal was of the view that the PW-1/Yashpal/claimant-injured was himself an eye witness to the said accident and his version of the incident was also corroborated by the DAR⁴ and the criminal investigation report filed by the police. Further, as the driver of the offending vehicle did not appear in the witness box, so as to elucidate on the factum of the accident, the learned Tribunal, relying on the testimony of the injured-claimant, drew an adverse inference against respondent No.1/driver and held the driver guilty of rash and negligent driving.

4. Insofar as the assessment of compensation is concerned, which is being assailed in the instant appeal, the learned Tribunal

²Tribunal

³Central Reserve Police Force



categorically assessed the amounts under different heads. Regarding the disability, although as per the disability certificate Ex.PW1/7, the injured-claimant had suffered 34% disability with respect to both lower limbs, the learned Tribunal assessed the permanent bodily disability @17%.

5. As regards the loss of income, the learned Tribunal found that the injured-claimant had not substantiated that he was earning Rs. 5,000/- per month from giving tuitions. The learned Tribunal after considering the MLC⁵ Ex. PW1/6 and the nature of injuries suffered, took the view that the petitioner/injured-claimant must have taken at least 6 months to recover, and hence, awarded a sum of Rs. 24,000/- towards loss of income. Lastly, insofar as the loss of future income is concerned, the learned Tribunal took Rs. 7,020/- as the minimum wages which were applicable for a graduate at the time of accident. Ergo, Rs. 2,43,454/- was awarded under this head.

6. Eventually, the learned Tribunal awarded a sum of Rs. 7,16,755/- as compensation to the claimants, which has been tabulated hereunder:

S.No.	HEADS	AMOUNT (In Rupees)
1.	Medicines & Treatment	Rs. 2,35,301/-
2.	Attendant Charges	Rs. 24,000/-
3.	Conveyance & Special Diet	Rs. 40,000/-
4.	Loss of Income/Studies	Rs. 24,000/-
5.	Permanent loss of future earnings due to disability	Rs. 2,43,454/-

⁴Detailed Accident Report

⁵Medico-Legal Case



6.	Pain and Suffering	Rs. 1,00,000/-
7.	Loss of Amenities	Rs. 50,000/-
	Total	Rs. 7,16,755/-

7. The appellant/injured-claimant is assailing the impugned judgment-cum-award *inter alia* on the grounds that the learned Tribunal has wrongly assessed the permanent disability @17% vis-à-vis the whole body, which should have been @ 34% as per the disability certificate proved on the record. Another objection raised by the appellant is with respect to the assessment of future prospects, which has not been taken into consideration by the learned Tribunal. Lastly, the appellant has contested the application of the wrong multiplier of 17, which should have been '18'.

8. *Per contra*, learned counsel for the Insurance Company urged that the learned Tribunal should have reckoned the notional income of the injured claimant at Rs. 5,000/- per month as claimed instead of taking into consideration the minimum wages which were on the higher side.

ANALYSIS AND DECISION:

9. Having given my thoughtful consideration to the submissions advanced by the learned counsels for the rival parties at the Bar and on perusal of the relevant record including the digitized Trial Court Record, this Court finds that the impugned judgment-cum-award requires minor modification with regard to the quantum of compensation.



10. First things first, the date of birth of the claimant was proven on the record to be 25.06.1981, and therefore, he was 19 years of age at the relevant time, and thus, the learned counsel for the appellant/claimant has rightly urged that the multiplier of 18 should have been applied. Secondly, although the learned Tribunal committed no illegality in discarding the evidence that the claimant was earning Rs. 5,000/- per month from tuitions, it rightly reckoned minimum wages for a matriculate prevalent during the relevant time in Delhi since the claimant was pursuing 2nd Year Graduation Course from Shivaji College, Raja Garden, New Delhi. The argument presented by the learned counsel for the Insurance Company lacks merit in asserting that the learned Tribunal erred in considering a notional income higher than what was claimed. Despite the claimant's assertion of a lower income, the learned Tribunal was within its rights to consider the minimum wages for a matriculate to ensure just, fair, and reasonable compensation, in accordance with the approved minimum wage scales set by the Government of the National Capital Territory of Delhi.

11. Having said that, however, the learned Tribunal committed a grave error in not reckoning the prospectus of future increase in the income or earnings of the claimant. Considering that the claimant was a young boy when he suffered permanent disability, it would be fair to assume that his income would have increased by at least 40% in terms



of decision in the case of **National Insurance Company v. Pranay Sethi**⁶.

12. Reverting to the assessment of compensation for loss of earning capacity or functional disability, a perusal of permanent disability certificate dated 25.07.2012 Ex.PW1/7 issued by the Medical Board of General Civil Hospital, Rewari, Haryana, would show that the claimant is the case of *Post Traumatic Mild Restricted movement of right knee to the extent of 6%; left ligament knee to the extent of 9% plus partial loss of stability to the extent of 21% and pain 2%*. The physical disability has been reckoned to be 34% in total with regard to *impairment of scar over middle of left leg*. Unfortunately, the claimant in his affidavit tendered in evidence Ex. PW1/A has not deposed as to how and in what manner the permanent disability has restricted his future aspirations.

13. Be that as it may, having regard to the fact that the permanent disability is only with regard to restricted movement of the left leg, and in the absence of any clarification by a medical practitioner or the member Doctor from the Medical Board, coupled with the fact that the certificate also spells out that the condition is 'likely to improve', this Court finds that considering loss of earning capacity or function disability *vis-a-vis* a whole body @ 17% cannot be held to be perverse or wrong.

14. Accordingly, the loss of earning capacity is reckoned as under :-

“Minimum Wages – Rs. 7,020/-
Adding Future Prospects @ 40% - 2,808/-

⁶ (2017) 16 SCC 680



Annual Notional Income – Rs. 1,17,936/- [Rs. 7,020 + Rs. 2,808 x 12]

Applying the multiplier of 18 and considering 17% disability; Rs. 1,17,936 x 18 x 17/100 = Rs. 3,60,884/-.

Total Loss of earning capacity = Rs. 3,60,884/-”

15. Lastly, as regards award of interest by the learned Tribunal @10% p.a. is concerned, it is borne out from the record that the accident occurred on 03.12.2010 and the claim petition was filed on 04.03.2011 which came to be decided vide the impugned judgment-cum-award dated 13.10.2016. Considering that the appellant was a young boy who had been denied just, rightful and fair compensation for such a long time by the Insurance Company, this Court does not consider it appropriate to interfere with the award of interest at 10% from the date of filing of DAR i.e. 04.03.2011 till realization.

16. Accordingly, the total compensation is arrived at as under:-

S.No.	HEADS	AMOUNT (In Rupees)
1.	Medicines & Treatment	Rs. 2,35,301/-
2.	Attendant Charges	Rs. 24,000/-
3.	Conveyance & Special Diet	Rs. 40,000/-
4.	Loss of Income/Studies	Rs. 24,000/-
5.	Permanent loss of future earnings due to disability	Rs. 3,60,884/-
6.	Pain and Suffering	Rs. 1,00,000/-
7.	Loss of Amenities	Rs. 50,000/-
	Total	Rs. 8,34,185/-

17. Hence the appellant is awarded total compensation of **Rs. 8,34,185/-** (Rupees Eight Lacs Thirty Four Thousand One Hundred Eighty-Five Only), which shall be payable to him with interest @10%



p.a. from the date of filing of the DAR i.e., 04.03.2011 till realization. The entire amount be paid to the claimant/appellant within four weeks from today, failing which, the respondent/Insurance Company shall be additionally liable to pay interest 12% p.a. from the date of this judgment till realization.

18. The appeal stands disposed of accordingly.

DHARMESH SHARMA, J.

JULY 01, 2024/sp