



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 08 May 2024**
Judgment pronounced on : 01 July 2024

+ **MAC.APP. 296/2018**

RAHUL KAUL

..... Appellant

Through: **Mr. Varun Sarin and Ms. Babita Rawat, Advs.**

versus

MANOJ KUMAR & ORS (UNITED INDIA INSURANCE COMPANY LTD.)

..... Respondents

Through: **Mr. Yuvraj Sharma, Adv. for
Mr. Pankaj Seth, Adv. for R-3/Insurance Company**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The instant appeal has been preferred by the appellant/injured-claimant in terms of Section 173 of the Motor Vehicles Act, 1988¹ assailing the quantum of compensation awarded by the learned Presiding Officer, Motor Accident Claims Tribunal, South East District, Saket Courts, New Delhi² *vide* the impugned judgment-cum-award dated 03.11.2016 in suit No. 715/2011, whereby, the learned Tribunal awarded a total compensation of Rs. 14,08,600/- to the injured-claimant along with interest @ 9% per annum from the date of filing of the petition till realization, which agitated to be on the lower side.

¹ Act

² Tribunal



FACTUAL BACKGROUND:

2. Shorn of unnecessary details, on 14.07.2011 at about 07:30 PM at Pushpa Bhawan Bus Stop, the appellant/claimant was hit by the offending DTC³ bus bearing registration No. DL-3C-9124, that was being driven by respondent No.1/Manoj Kumar allegedly in a very rash and negligent manner, resulting in grievous injuries him. Later, a PCR⁴ van came and removed the injured to AIIMS Trauma Centre, New Delhi where his MLC⁵ was prepared by the concerned doctors. Consequently, FIR No. 183/2011 was registered under Section 279/338 of the IPC⁶ with the Police Station Ambedkar Nagar, Delhi. Subsequently, a DAR⁷ was filed by the police on 15.09.2011, which ultimately became the basis of the claim proceedings before the learned Tribunal.

IMPUGNED JUDGMENT-CUM-AWARD:

3. At the outset, there is no challenge to the findings recorded by the learned Tribunal that the appellant/claimant suffered injuries due to rash and negligent driving of respondent No.1/driver⁸. As regards the quantum of compensation, which has been assailed herein this appeal, the learned Tribunal gave categorical findings with respect to assessment and grant of compensation under various heads. As per the

³ Delhi Transport Corporation

⁴ Police Call Record

⁵ Medico-Legal Case

⁶ Indian Penal Code, 1860

⁷ Detailed Accident Report

⁸ Section 2(9) "driver" includes, in relation to a motor vehicle which is drawn by another motor vehicle, the person who acts as a steersman of the drawn vehicle.



MLC, the nature of injuries was described as “*Laceration, I eye brow 3X1X1 cm, abrasion r thigh, lw over*” and the petitioner/claimant cited the disability certificate dated 28.04.2016 as per which, he suffered permanent disability to the extent of 78% in relation to his right lower limb. Taking into consideration the medical bills Ex.PW1/I, the learned Tribunal awarded Rs. 50,000/- towards medical expenses.

4. Further, insofar as the loss of income is concerned, PW-1/Rahul Kaul clearly stated in his affidavit in evidence that he was engaged in a Private job at Paras Equipments and Engineering Pvt. Ltd. at Pushpa Bhawan, New Delhi, as a supervisor and was earning Rs. 15,200/- per month Ex.PW-1/J including the conveyance allowance. The learned Tribunal, after deducting the conveyance allowance, assessed the monthly income at Rs. 10,000/- and awarded Rs. 30,000/- considering that the injured-claimant must have taken a rest of 3 months.

5. It is worth mentioning that the petitioner/claimant filed a copy of the Election ID (Ex. PW1/L) during his examination, which goes on to show that he was 21 years of age at the time of date of the accident i.e. 14.07.2011. Thus, the learned Tribunal quantified the amount under loss of future income at Rs. 12,63,600/-. Lastly, considering all the pecuniary as well as non-pecuniary heads of compensation, the learned Tribunal awarded a total compensation of Rs. 14,08,600/-. The apportionment of compensation has been depicted hereunder:

1.	Compensation for Medical expenses	Rs. 50,000/-
2.	Compensation for pain & suffering	Rs. 30,000/-
3.	Compensation for special diet, conveyance	Rs. 15,000/-



	and attendant charges	
4.	Loss of future earning capacity/future income	Rs. 12,63,600/-
5.	Compensation for loss of amenities and enjoyment of life	Rs. 10,000/-
6.	Compensation for disfigurement	Rs. 10,000/-
7.	Loss of income during treatment	Rs. 30,000/-
	Total	Rs. 14,08,600/-

LEGAL SUBMISSIONS ADVANCED AT THE BAR:

6. The learned Counsel for the Insurance Company submitted the appeal stating that the learned Tribunal has rightly reckoned the permanent disability @ 39% and the total amount of compensation awarded is just fair and reasonable. *Per Contra*, learned Counsel for the appellant/injured-claimant, placing reliance upon the decision in the case of **Pappu Deo Yadav v. Naresh Kumar**⁹, averred that the learned Tribunal ought to have taken a higher percentage of permanent disability i.e. @ 80%, considering the nature of injuries in the present case. Secondly, it was urged that the learned Tribunal has erred in reckoning the monthly income of the injured-claimant @ 10,000/- despite the fact that his salary slip has already been proved on the record as Ex. PW-1/J and in this regard, learned counsel for the appellant referred to a decision of this Court in **IFFCO Tokio General Insurance Co. Ltd. v. Sushila Yadav**¹⁰. Lastly, the appellant has challenged the amount awarded under other pecuniary as well as non-pecuniary heads.

⁹ (2022) 13 SCC 790

¹⁰ 2017 SCC OnLine Del 9561



ANALYSIS AND DECISION:

7. Having given my thoughtful consideration to the submissions advanced by the learned counsels for the rival parties at Bar and on perusal of the relevant records including the digitized Trial Court Record, unhesitatingly, this Court is persuaded to find grounds to interfere with the impugned judgment-cum-award and thereby, award enhanced compensation to the appellant/claimant.

8. While the learned Tribunal has taken a pragmatic view in awarding compensation to the appellant/claimants towards reimbursement of medical expenses to the extent of Rs. 50,000/-, the compensation awarded towards pain and suffering, loss of enjoyment of amenities of life and disfigurement are certainly on the lower side and cannot be continued. No compensation has been awarded by the learned Tribunal for the loss of marriage prospects of the appellant/claimant either. However, before we proceed to an enhance and quantify the compensation under each of such heads, it is borne out from the record that the appellant/claimant has suffered 78% disability in relation to his right lower limb being in the nature of operated case of open fracture shaft of femur 'right'. As per the Disability Certificate issued by the All India Institute of Medical Sciences (AIIMS) dated 28.04.2016, the Locomotor Disability is opined to be 'non-progressive' as also 'not likely to improve'. The appellant/claimant was 21 years of age at the time of the accident and it has been proven on the record that he was working as a Supervisor deriving salary of Rs. 15,200/- per month.



9. To my mind, the learned Tribunal wrongly deducted a sum of Rs. 5,200/- towards conveyance and other allowances from the said salary component and wrongly assumed the notional income @ Rs. 10,000/- for the purposes of ascertaining and assessing the compensation on account of loss of earning capacity or functional disability. The plea by the learned counsel for the appellant/claimant that conveyance and other allowances were personal to him and it constituted a kind of perk for better performance of his duties, is sustainable and there was no reason to discard the same.

10. Therefore, according the benefit of including conveyance and other allowances, the salary of the claimant is to be reckoned at Rs. 15,200/- per month, to which, 50% is to be added towards increase in future prospects and therefore, the monthly income of the appellant/claimant comes to Rs. 22,800/- (Rs.15,200/- + Rs.7,600/-).

11. To my mind, the learned Tribunal has rightly opined that although the appellant/claimant has suffered 78% permanent Locomotor Disability, the loss of earning capacity or functional disability *vis-a-vis* whole body could only be reckoned to be 39% and further, applied the correct multiplier of 18. Accordingly, the loss of future earning is arrived at Rs. 19,20,672/- (Rs. 22,800/- x 12 = 2,73,600 ; 2,73,600 x 39/100 x 18 = 19,20,672/-).

12. Reverting back to the non-pecuniary compensation awarded under different heads, having regard to the fact that the appellant/claimant has lost his job and remained unemployed for about a year, the quantum of compensation is increased to Rs. 1,00,000/- each towards pain and suffering, loss of enjoyment of life and loss of



marriage prospects. Further, a sum of Rs. 25,000/- is awarded towards disfigurement and Rs. 50,000/- towards future medical treatment in the nature of further surgery as well as physiotherapy sessions etc. Accordingly, the total compensation assessed for the appellant/claimant is arrived at as under:-

1.	Compensation for Medical expenses	Rs. 50,000/-
2.	Compensation for pain & suffering	Rs. 1,00,000/-
3.	Compensation for special diet, conveyance and attendant charges	Rs. 15,000/-
4.	Loss of future earning capacity/future income	Rs. 19,20,672/-
5.	Compensation for loss of amenities and enjoyment of life	Rs. 1,00,000/-
6.	Compensation for disfigurement	Rs. 25,000/-
7.	Future medical treatment	Rs. 50,000/-
8.	Loss of marriage prospects	Rs. 1,00,000/-
	Total	Rs. 23,60,672/-

13. However, a core correction is required. The claim petition was filed on 15.09.2011 and the judgment was pronounced in about five years. It appears that there was some delay on the part of the appellant/claimant in pursuing his claim petition. The award of compensation in the nature of interest @ 9% per annum cannot be continued, as this Court has taken a consistent view that ordinarily, the rate of interest should be 7.5% per annum.

14. In view of the foregoing discussion, the present appeal is allowed and the appellant/claimant is awarded a total compensation of Rs. 23,60,672/- (Rupees Twenty Three Lacs Sixty Thousand Six



Hundred Seventy Two Only) with the interest @ 7.5% from the date of filing of the petition till realization.

15. If the amount of compensation has already been released to the appellant/claimant in terms of the impugned judgment-cum-award dated 03.11.2016, the enhanced amount of compensation with interest be computed accordingly in terms of the directions of this Court and the same be paid to the appellant/claimant within four weeks from today, failing which, respondent No.3/Insurance Company shall be liable to pay penal interest @12% per annum from the date of this judgment till realization.

DHARMESH SHARMA, J.

JULY 01, 2024/*sp*