



2024:DHC:5918



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 30th July, 2024**
+ **MAC.APP. 423/2018 & CM APPL. 17654/2018**

THE ORIENTAL INSURANCE CO LTDAppellant
Through: **Mr. Pradeep Gaur, Mr. Amit Gaur**
with Ms. Sweta Sinha, Advocates.

versus

PRABHAT KISHAN BHAT & ORSRespondents
Through: **Mr. T. N Razdan and Mr. Argha Roy,**
Advocates.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant appeal has been filed by the appellant under section 173 of Motor Vehicles Act, 1988 seeking following reliefs:

“ It is, therefore, most respectfully and humbly prayed that this Hon'ble Court may be pleased to set aside the judgment dated 17.02.2018 passed by the Hon'ble Judge MACT Sh. Devender Kumar, Judge MACT, Karkardooma Courts, Delhi in suit No. 547/2016.

It is further prayed that rate of interest may kindly be reduced from 9% p.a. to 6% p.a. and penal interest granted by the Hon'ble Tribunal may kindly be set aside.

Any other relief deemed fit and proper in the facts and circumstances of the case, may also be passed in favour of the appellant and against the respondents. ”

2. On 25th May, 2012, at around 4:15 pm, the claimant/respondent no.1 was travelling in his vehicle bearing no. UP-14BK 0316, and reached the spot near Seemapuri Bus Stand, where one Gramin Sewa vehicle bearing



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No. DL-2W-2906 being driven by the driver allegedly in a rash and negligent manner at a high speed collided with the scooty of the appellant. Resultantly, the respondent no.1 suffered various injuries.

3. Thereafter, the respondent no.1 informed his brother, and in the meanwhile a PCR also arrived. Pursuant to the same, the respondent no. 1 was taken to the hospital, where it was diagnosed that he suffered double fractures, and was under treatment from 22nd May, 2013 till 26th May 2013 and further remained bed ridden for about two months.

4. Accordingly, the respondent no. 1 filed the claim before the learned Tribunal seeking a compensation of Rs. 15 Lacs with interest @ 18 % per annum.

5. Vide judgment dated 17th February, 2018, the learned Tribunal awarded a compensation of Rs. 21,32,000/- along with interest @ 9% p.a. from 21st August, 2013 till realisation to the respondent no. 1.

6. Aggrieved by the impugned award dated 17th February, 2018, the appellant has preferred the instant appeal seeking setting aside of the same.

7. Learned counsel appearing on behalf of the appellant submitted that while passing impugned award, the learned Tribunal, has not properly taken into consideration the correct position of law as well as the facts.

8. It is further submitted that the learned Tribunal failed to take into consideration that the driver and owner of the Gramin Sewa, the respondent nos. 2 and 3 respectively, claimed that the accident was due to the respondent no.1's own rash and negligent driving.



9. It is submitted that despite the injured claiming a salary of Rs. 60,000/- per month, he did not present any authorized officer to verify his salary or leave details, nor did he provide documents to support his claim of unpaid salary. Hence, the compensation granted for loss of income during the treatment period is exorbitant.

10. It is further submitted that the learned Tribunal awarded Rs. 17,33,270/- for loss of future income due to a 15% permanent disability in the respondent no.1's left lower limb. It is contended that the respondent no.1 did not provide proof of economic loss or call any authorized company official to verify his salary and leave details hence, the learned Tribunal determined a 10% functional disability without finding any cogent reason.

11. It is further submitted that the learned Tribunal failed to consider that the respondent no.1 was being given promotion and increased salary in his job, which substantiates the fact that there was no future income loss, thereby, the learned Tribunal erred in awarding the compensation towards future prospects.

12. It is submitted that the learned Tribunal's assessment of 15% disability was challenged as the claimant failed to summon a doctor to prove the disability. Therefore, it is submitted that without proof of permanent disability, the learned Tribunal's consideration was deemed contrary to law, adversely affecting the appellant's rights.

13. It is further submitted that the learned Tribunal awarded compensation for attendant charges, conveyance and special diet, medical bills, pain and sufferings, and loss of amenities of life, however, the respondent no.1 did



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not prove expenditures for attendant charges, making the compensation unjustified and excessive.

14. It is submitted that the learned Tribunal wrongly awarded interest at 9% per annum from the date of filing the petition, since the interest rate should not exceed 6% per annum, aligning with general bank interest rates in India.

15. In view of the aforesaid submissions, learned counsel for the appellant submitted that the instant appeal may be allowed and the reliefs as sought by the appellant may be granted.

16. *Per Contra*, learned counsel for the respondent no. 1 vehemently opposed the instant appeal, submitting to the effect the impugned award passed by the appellant does not merit any interference.

17. It is further submitted that the respondent no. 1 was hospitalized from 22nd May, 2013 to 26th May 2013, incurring Rs 2,50,000/- as his treatment expenses and following his discharge, the respondent no. 1 was bed-ridden for two months and to manage his transportation, he hired a driver at Rs 10,000/- per month for ten months.

18. It is further submitted that regarding medical expenses, the respondent claimed Rs 2,50,000/- for medical and ancillary expenses, including Rs 1,19,681.99/- paid to Max Health Care.

19. It is submitted that the respondent also underwent physiotherapy during his seven-month recovery period, although no receipts were provided, therefore, he requested reasonable compensation for these expenses.



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20. It is further submitted that regarding nursing care, the respondent's wife nursed him for seven months, and he claimed a minimum compensation of Rs 10,000/- per month for the same. The learned Tribunal in this regard awarded only Rs 15,000/- for nursing charges, refuting the appellants' suggestion that the compensation was excessive.

21. In view of the aforesaid submissions, the learned counsel appearing on behalf of the respondent no. 1 submitted that the instant appeal being devoid of merit is liable to be dismissed.

22. Heard learned counsel for the parties as well as perused the material on record.

23. Appeal is admitted.

24. The limited question for adjudication before this Court is the quantum of the compensation awarded to the respondent no. 1. The appellant has not disputed on the aspect whether the respondent no.1 suffered injuries due to the rash and negligent driving the respondent no. 2.

25. The relevant extract of the impugned order is reproduced herein under:

“11. ISSUE NO. 2 - The onus to prove this issue was also fixed upon the petitioner. Since the petitioner has proved that the Respondent No. 1 caused this accident by his rash and negligent driving due to he is entitled for compensation.

12. The scope of the compensation in injury cases has been discussed by the Hon'ble Supreme Court in case titled Mr. R.D. Hattangadi vs M/S Pest Control (India) Pvt. Ltd., 1995 AIR 755 in the following words as under:



Broadly speaking while fixing an amount of compensation payable to a victim of an , accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money-, whereas non-pecuniary i amages are those which are incapable of being assessed by arithmetical calculations in order to appreciate two concepts pecuniary damages may, include expenses incurred by the claimant: (i) medical attendance: (ii) loss of earning of profit upto the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

13. Further, in Raj Kumar v. Ajay Kumar (2011) 1 SCC (Cri) 1161, has laid down the following criteria to determine the compensation in injury cases as under:

6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

- (i) Expenses relating to treatment, hospitalization, medicines, transportation ,nourishing food, and miscellaneous expenditure.*
- (ii) Loss of earnings (and other gains) which the injured would have made had he not been Injured, comprising: (a)*



- Loss of earning during the period of treatment; (b) Loss of future earning on account of permanent disability.*
- (iii) *Future medical Expenses.*
Non-pecuniary damages (General damages)
 - (iv) *Damages for pain, suffering and trauma as a consequence of the injuries.*
 - (v) *Loss of amenities (and /or loss of prospects of marriage).*
 - (vi) *Loss of expectation of life (shortening of normal longevity).*

In routine personal injury cases, compensation will be awarded only under heads (i). (ii) (^) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii) (b), (Hi), (v) and (vi) relating to loss of future earning on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

7. Assessment of pecuniary damages under Item (i) and under Item (ii) (a) do not pose much difficulty as they involved reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses-Item (ii) - depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages-Items 9(iv), (v) and (vi) - involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/ deprivation/ disability suffered by the claimant and the effect thereof on the future life of the claimant. Decisions of this Court and the High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability- Item (ii) (a).



In view of the above said law, the damages / compensation of the petitioner has to be decided under the following heads as under:

14. Reimbursement of medical expenses: Petitioner has proved medical bills Ex.PA 1/2 (colly) for Rs 1,23,038/-, but the he has admitted that he has already received an amount of Rs.1,13,422/- from M/s. Bajaj Allianz Insurance Co, Ltd. and this fact has also been corroborated by PW2 that bills have been reimbursed through office. The status of remaining amount of bill is not known due to he is not entitled for this amount also. However, bills Ex.PW 1/3 are on record in original and have not been reimbursed. These bills are pertaining to Rs. 4,950/- to which respondents have not proved that they have been reimbursed in the similar manner as of others due petitioner is entitled for reimbursement of these medical bills of Rs. 4,950/-.

15. Pain and Suffering: PW1 has proved that he sustained grievous injuries and also went through an operation consequent upon this accident. He sustained 15% permanent disability to his left lower limb and remained under treatment for long time. It is not disputed that a person who sustained such injuries and went through such medical process is bound to suffer pain and suffering due to injured is entitled for compensation under this head.

16. Conveyance & Special diet: Petitioner has not filed any bill of conveyance and special diet to prove that he spent any amount under these heads. However, injured sustained leg injuries and remained hospitalized for a long time and must have roamed around to get treatment and expenses on conveyance were bound to happen. Even during hospitalization of a person under such medical condition is bound to require



special diet for fast recovery due to he is entitled for compensation under the heads of conveyance and special diet.

17. Attendant charges: Petitioner has not proved that he availed services of any attendant to assist him during bed ridden period after the accident. However, he has proved that he availed the services of one Sukhvinder Singh to drive his car provided by the office during the period between June, 2013 to March, 2014 and document Ex. PW1/G has been proved to this effect, however it is not clear from this document that the services of this driver were availed to assist him during bedridden period as attendant or to drive somewhere. In fact, the services of the driver cannot be substituted to a nursing attendant whose services are reimbursable. Contrary to it, PW2 has failed to prove this fact in the absence of any document that the injured was provided any car by the office without driver. As such, the service of driver is not reimbursable. However, injured got treatment for fracture injuries and must be assisted by some family member due to he is entitled for compensation under this head for 3 months @ Rs. 5,000/- pm.

18. Lose of Income during treatment period: Petitioner has proved that he was treated for the period between 22/5/13 to 26/5/13 in Max Hospital but has argued that he lost his income during the period of 7 months which was his treatment period. However, monthly income of the petitioner has to be determined before deciding this loss of income. Petitioner has alleged that he was working as Sr. Manager at the time of accident and was drawing his salary of Rs. 1,19,371/- pm. However, PW2 has proved that he has been drawing salary more than earlier and even has been promoted to Assistant General Manager. Even he received salary during the period of leaves. Though it is also not proved that he availed two months leaves on account of this accident, yet PW2 has deposed that two month salary was not paid, but again there is no document



to this effect. As such, none of the document could prove the loss of income of the injured from this accident, however the bed ridden period of the injured was definite and it cannot be said that he did not avail any leave despite his bed confinement. Even if he availed his leaves then also he has lost his leaves on account of this accident and cannot be allowed to suffer the loss of leaves which could have utilized by him in case of some requirement. As such, he is entitled for compensation for two months of salary as per salary certificate i.e. Rs. 1,19,371/- pm.

19. Lose of disability: Petitioner is entitled for compensation under this head as he has suffered 15% disability to his left lower limb. Ld. Counsel for the respondents have argued that the disability of the injured cannot be considered as per disability certificate and petitioner is not entitled for any compensation under this head. However, the purpose of disability certificate is to determine the actual as well as functional disability suffered by the injured during accident. It is not disputed that the functional disability is to be determined as per Schedule I of the Workmen's Compensation Act, 1923 in terms of Section 143 of M.V. Act. It has held in Oriental Insurance Co. Ltd. V. Mohd. Nasir (2009) 6 SCC 280 that, both the statutes provide for the mode and manner in which the percentage of loss of earning capacity is required to be calculated. They provide the amount of compensation in cases of this nature would be directly relatable to the percentage of physical disability suffered by the injured vis-a-vis the injuries are specified in the First Schedule of the 1923 Act. Indisputably where injuries are specified in the First Schedule, the mode and manner provided for the purpose of calculating the amount of compensation would be applicable. The 1923 Act would also be applicable to the claims applications arising out of the use of motor vehicles in terms of the provisions of the 1988 Act for the purpose of determination of the amount of compensation where the victim of the accident suffers from disability in the cases



coming within the purview of thereof. The note appended to the Second Schedule of the 1988 Act raises a legal fiction stating that "injuries deemed to result in permanent total disablement / permanent partial disablement and percentage of loss of earning capacity shall be as per Schedule I under the Workmen's compensation Act, 1923". In fact, permanent disability, therefore, for certain purposes have been co-related with the functional disability. Disablement and loss of earning capacity are two different aspects and not substitute to each other; however, functional disability, thus, has a direct relationship with the loss of limb. As per disability certificate, it is 15%, but it is not covered under Schedule I of the Workman's Compensation Act, 1923 and functional disability may be definitely less than it. However, it is not disputed that the injured is still working and rather has been promoted to his job. But, it also cannot be disputed that the efficiency of the injured has definitely lessen by this injury. In view of the facts, I determine the functional disability of the injured @ 10%. Future damages are also determined as per 10% permanent disability.

20. Further, the multiplier of the damages has to be determined as per *Sarla Verma v. DTC*, (2009) 6 SCO 121. However, the determination of the age of the petitioner is necessary to apply this multiplier. As per voter ID, the age of injured is about 52 years but it is 53 years as per Aadhar card. However, as per disability certificate, age is 53 years. In view of voter ID and Aadhar card, age of petitioner is determined as 53 years. The multiplier for age group between 51 to 55 years is LI and the loss of income of the petitioner has to be determined as per this age. As such, the monthly income of the injured is Rs. 1,19,371/- pm and after multiplying it by 12, it comes to Rs. 1,19,371 x 12 = 14,32,452/-. The 10% of Rs.14,32,452/- would be Rs. 1,43,245/-. An additional 10% income i.e. Rs. 14,325/- has to be added towards future earning in view of *ORIENTAL INSURANCE CO. LTD. versus RAHUL GUPTA @ MANOJ*



KUMAR & ORS MAC.APP.542/2013 and the ruling of a Constitution Bench of the Hon'ble Supreme Court in SLP (C) 25590/2014, National Insurance Company Ltd. Vs. Pranay Sethi and Ors. In fact, the total loss would be Rs.1,43,245 + 14,325 = 1,57,570 X 11 = Rs. 17,33,270/-.

21. Damages for inconvenience, hardship, discomfort, frustration and mental stress in life: Petitioner has proved disfigurement and loss of amenities as well as enjoyment on record by suffering this permanent disability and inconvenience is bound to happen by such injuries. Even he must have suffered mental stress in life by this injury due to he is entitled for compensation under these head.

As such, petitioner is entitled for the compensation as under:

1.	Reimbursement of medical expenses:	Rs. 4,950/-
2.	Pain and Suffering:	Rs. 75,000/-
3.	Attendant charges for 3 months:	Rs.15,000/-
4.	Loss of Income during treatment period or in lieu of leaves : (2 months)	Rs. 1,19,371 x 2 = Rs. 2,38,742/-
5.	Loss of earning capacity including future due to disability	Rs. 17,33,270/-
6.	Conveyance & special diet:	Rs. 25,000/-
7.	Damages for inconvenience, loss of amenities, hardship, discomfort, frustration and mental stress in life	Rs. 40,000/-
	Total =	Rs. 21,31,962/-(rounded off Rs. 21,32,000/-)

26. The learned Tribunal observed that respondent no.1 needed to prove that his injuries were due to the respondent's rash and negligent driving. The burden of proof was on him, and he testified as witness no. 1 repeating his allegations. It evaluated the case based on the preponderance of probability rather than the strict standard of proof in civil cases, as guided by previous judgments of the High Courts and Hon'ble Supreme Court and further



observed that the Motor Vehicles Act, 1988 does not require a trial but an inquiry to determine just compensation, and strict evidence rules are not applicable to the Motor Accident Claims Tribunals.

27. The claimant proved that on 22nd May 2013, he was injured in an accident caused by the respondent by driving his vehicle negligently. He sustained grievous injuries, was treated at GTB Hospital, and later underwent a surgical procedure at Max Hospital. Evidence included medical records and an FIR that supported the claim of rash and negligent driving. The vehicle was inspected, found damaged, and the insurance policy was valid at the time of the accident, making the insurance company liable to indemnify the policy holder.

28. The learned Tribunal considered various heads for compensation, including medical expenses, pain and suffering, conveyance and special diet, attendant charges, loss of income during the treatment period, and compensation for disability. The learned Tribunal evaluated each head based on evidence and legal precedents and awarded the following compensation:-

1. **Medical Expenses:** The respondent no.1 submitted medical bills totalling Rs. 1,23,038/-, but had already been reimbursed Rs. 1,13,422/- by the insurance company. Hence, he was held to be entitled for Rs. 4,950/- for unreimbursed medical bills.
2. **Pain and Suffering:** Due to the grievous injuries and 15% permanent disability in his left lower limb, the respondent no.1 was awarded compensation for pain and suffering.



3. **Conveyance and Special Diet:** The learned Tribunal acknowledged the respondent no.1's need for transportation and a special diet due to his injuries, granting compensation for these costs.
4. **Attendant Charges:** Although there was no proof of hiring an attendant, the respondent no.1 did use a driver during his recovery. The learned Tribunal compensated for this indirectly by assuming family assistance.
5. **Loss of Income During Treatment:** The respondent no.1 was a Senior Manager earning Rs. 1,19,371/- per month. Despite receiving salary during his leave, he was awarded compensation for two months' salary due to the lost leaves. Accordingly, the learned Tribunal held that the respondent no. 1 was entitled for two months' of his salary.
6. **Disability Compensation:** The learned Tribunal held that there is a 10% functional disability and applied the multiplier method as per the legal precedents. Considering the petitioner's age, which is 53 years, the compensation was calculated as follows:

Salary of the respondent no. 1=Rs. 1,19,371/-

Annual salary= Rs. 1,19,371/- x 12= 14,32,452/-

10% of annual salary towards future losses = Rs. 14,32,452/- x 10% = Rs. 14,32,452/-

**Total loss = Rs. 1,43,245/- + 14,32,452/- x 11
= Rs. 17,33,270/-.**



7. Inconvenience, Hardship, Discomfort, and Mental

Stress: The respondent no.1's injuries and resultant disabilities justified compensation for mental and physical distress. Accordingly, the learned Tribunal awarded him Rs. 40,000/- as compensation.

29. Now adverting to the adjudication of the instant appeal on merits.

30. The learned Tribunal rightly considered the holistic view that strict rules of evidence do not bind the Motor Accident Claims Tribunal and it shall award just compensation to the injured party. It shall ensure that innocent victims do not suffer due to technicalities.

31. The learned Tribunal correctly observed that since the respondent no. 1 proved that the respondent no. 2's rash and negligent driving caused the accident. Therefore, the respondent no.1 is entitled to compensation.

32. This Court is of the view that the learned Tribunal appropriately differentiated between pecuniary and non-pecuniary damages and assessed them based on the evidence provided.

33. *Qua* the medical expenses, since the majority of the amount claimed by the respondent no. 1 by way of medical bill has already been reimbursed to it by the insurance company and an amount of Rs. Rs. 4,950/- was left to be reimbursed. This Court is of the view that the learned Tribunal correctly awarded Rs. 4,950/- for unreimbursed medical bills.

34. For the expenses pertaining to the Pain and Suffering, this Court is of the view that the learned Tribunal rightly awarded compensation of Rs. 75,000/- for pain and suffering, recognizing the grievous nature of the



injuries and the prolonged treatment. This Court is of the view that the learned Tribunal correctly awarded Rs. 75,000/- for pain and suffering.

35. *Qua* the Conveyance and Special Diet, this Court is of the view that the learned Tribunal awarded compensation for conveyance and special diet of Rs. 25,000/-, acknowledging the necessity of these expenses despite the absence of specific bills.

36. For the expenses pertaining to the Attendant Charges, the learned Tribunal granted compensation for attendant charges, recognizing the need for assistance during recovery, even though no formal attendant was employed. This Court is of the view that the learned Tribunal correctly awarded Rs. 15,000/- for Attendant Charges.

37. *Qua* loss of Income, the learned Tribunal rightly awarded compensation for two months' salary, acknowledging the loss of leave due to the accident. This Court is of the view that the learned Tribunal correctly awarded Rs. 2,38,742/- for loss of income.

38. For the expenses pertaining to the disability compensation, the Tribunal correctly assessed the functional disability at 10% and calculated future damages based on the multiplier method. The learned Tribunal applied the appropriate multiplier and included future earning prospects, arriving at a total loss of Rs. 17,33,270/-. This Court is of the view that the learned Tribunal correctly awarded Rs. 17,33,270/- for expenses pertaining to the disability compensation.

39. *Qua* inconvenience and mental stress, the learned Tribunal awarded compensation for inconvenience, hardship, discomfort, frustration, and



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mental stress, recognizing the significant impact of the injuries on the petitioner's life.

40. Accordingly, it is held that the learned Tribunal's findings are supported by substantial evidence and are in accordance with the legal principles governing compensation for motor vehicle accidents. The learned Tribunal rightly concluded that respondent no. 1's rash and negligent driving caused the accident and that the claimant before the learned Tribunal is entitled to just compensation.

41. This Court is of the view that the learned Tribunal meticulously applied legal standards and precedents to ensure just compensation, recognizing both pecuniary and non-pecuniary damages. This thorough approach underscores the judiciary's commitment to fairness in personal injury cases, balancing evidence with the broader impacts on the injured party's life.

42. In view of the aforesaid discussions on facts as well as law, the impugned award dated 17th February, 2018 passed by the learned MACT, Karkardooma Courts, Delhi in suit No. 547/2016 is upheld.

43. Accordingly, the instant appeal is dismissed alongwith pending applications, if any.

44. The order to be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JULY 30, 2024

rk/dy/db/sm

Signature Not Verified

Digitally Signed
By: DAMINI YADAV
Signing Date: 14.08.2024
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