



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

% **Judgment reserved on : 22 May 2024**  
**Judgment pronounced on: 09 August 2024**

+ **MAC.APP. 1127/2018**

**KIRTI GUPTA**

..... Appellant

Through: Mr. Manish Maini and Ms.  
Pooja Goel, Ms. Subhavana  
Verma and Ms. Divya Saini,  
Advocates.

versus

**VINAY KUMAR AGGARWAL & ORS (NATIONAL  
INSURNACE CO TLD)**

..... Respondents

Through: Mr.Yuvraj Sharma, Advocate  
for Mr.Pankaj Seth, Advocate  
for R-1.

**CORAM:**

**HON'BLE MR. JUSTICE DHARMESH SHARMA**

### **J U D G M E N T**

1. The present appeal has been preferred on behalf of the appellant/injured under Section 173 of the Motor Vehicles Act, 1988<sup>1</sup> assailing the quantum of compensation awarded by the learned Presiding Officer-Motor Accident Claims Tribunal, Shahdara, Karkardooma Courts, Delhi<sup>2</sup> vide the impugned judgment-cum-award dated 26.03.2018 in MAC No. 295/16, whereby the learned Tribunal awarded a total compensation of Rs.25,90,000/- to the claimants but

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<sup>1</sup>M.V. Act

<sup>2</sup>Tribunal



curtailed the said amount to Rs.16,83,500/- while deducting 35% towards contributory negligence.

### **FACTUAL BACKGROUND:**

2. Shorn of unnecessary details, it was on the unfortunate day of 18.12.2012, when the appellant/claimant Kirti Gupta along with her son namely Master Archit, who was a pillion rider, was driving her battery operated Scooty towards her house and when she reached a turn towards C Block, Vivek Vihar, suddenly, a vehicle bearing No. DL-5CD-4556<sup>3</sup>, owned by respondent No.2/Roshan Lal and being driven by respondent No.1/Vinay Kumar Aggarwal in a rash and negligent manner, hit the Scooty of the claimant-injured from behind causing multiple injuries to her. Consequently, she was removed to Pushpanjali Hospital for her treatment and remained there from 18.12.2012 to 21.12.2012. Later, an FIR<sup>4</sup> No. 377/12 was registered under Sections 279/338 of the IPC<sup>5</sup> with Police Station Vivek Vihar, Delhi. Resultantly, the claimant-injured filed a claim petition on 21.05.2013 seeking compensation to the tune of Rs. 10 Lacs.

### **THE IMPUGNED JUDGMENT-CUM-AWARD:**

3. As regards issue No.1, the learned Tribunal after taking into consideration the DAR<sup>6</sup>, which contains the FIR, MLC<sup>7</sup> of the injured, the site plan as also the seizure memo of the Offending vehicle, came to the conclusion that the Offending vehicle was indeed involved in

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<sup>3</sup>Offending vehicle

<sup>4</sup>First Information Report

<sup>5</sup>Indian Penal Code, 1860

<sup>6</sup>Detailed Accident Report

<sup>7</sup>Medico-Legal Case



the accident which has been further corroborated by the site plan which proved the location of the accident, and thus, respondent No.1/driver<sup>8</sup> was held liable for rash and negligent driving.

4. Insofar as the loss of income is concerned, evidently, the claimant-injured was working as a Financial Advisor with Birla Sun Life Insurance and she was self-employed and was earning Rs. 50,000/- per month. In her affidavit in evidence, she deposed that the accident has totally curtailed her working capacity. The learned Tribunal was of the view that the said disability has not restricted her to do her professional work i.e., to advise her clients, however, considering the nature of injuries, the learned Tribunal assessed loss of income for a period of one month.

5. Further, with respect to loss of disability, the appellant/claimant in her affidavit in evidence deposed that as per the disability certificate Ex.PW1/X, she suffered permanent disability to the extent of 46% with respect to her right lower limb. The learned Tribunal held that the said disability is not covered under Schedule I of the Workman's Compensation Act, 1923, and the functional disability may be less than what is claimed, and accordingly, assessed the functional disability @ 25%.

6. Lastly, considering all the pecuniary as well as non-pecuniary heads of compensation, the learned Tribunal awarded a total compensation of Rs. 25,90,000/-. The same has been tabulated hereunder:

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<sup>8</sup>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.



|     |                                                                            |                                                      |
|-----|----------------------------------------------------------------------------|------------------------------------------------------|
| 1.  | Reimbursement of medical expenses                                          | Nil                                                  |
| 2.  | Pain and Suffering                                                         | Rs. 1,00,000/-                                       |
| 3.  | Attendant charges for 3 months                                             | Rs. 5,000 x 3 = 15,000/-                             |
| 4.  | Loss of Income during treatment period for one month                       | Rs. 40,170/-                                         |
| 5.  | Loss of earning capacity including future due to this disability           | Rs. 22,59,510/-                                      |
| 6.  | Conveyance and special diet                                                | Rs. 25,000/-                                         |
| 7.  | Compensation for mental and physical shock                                 | Rs. 50,000/-                                         |
| 8.  | Loss of amenities in life                                                  | Rs. 50,000/-                                         |
| 9.  | For future expenses                                                        | Nil                                                  |
| 10. | Damages for convenience, hardship, frustration and permanent disfigurement | Rs. 50,000/-                                         |
|     | <b>Total =</b>                                                             | <b>Rs. 25,89,680/- (rounded off Rs. 25,90,000/-)</b> |

7. It is pertinent to note here that the learned Tribunal accentuated the testimony of R2W1/HC Narender Pal, who is the Investigating Officer. He deposed that he recorded the statement of Master Archit/PW-5(Ex. R2W1/A) under Section 161 of Cr.P.C<sup>9</sup>, who was a minor aged 15 years at the time of the accident. Intriguingly, the statement of PW-5/Archit rather proved that he was the one driving

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<sup>9</sup>Code of Criminal Procedure, 1973



the vehicle and the injured-Kirti Gupta i.e., the mother, was a pillion rider instead.

8. Conclusively, the learned Tribunal held that PW-5/Archit was driving the vehicle, who was a minor and not eligible to hold a Driving Licence<sup>10</sup>, and thus, the owner i.e., the mother/injured-claimant was held responsible for allowing her minor son to drive the said vehicle. Ergo, 35% of the awarded amount was deducted towards contributory negligence by the learned Tribunal on the part of the injured.

#### **LEGAL SUBMISSIONS ADVANCED AT THE BAR:**

9. Learned Counsel for respondent No.3/Insurance Company averred that the present appeal is not maintainable as the learned Tribunal has rightly reckoned the functional disability @ 25% and the total amount of compensation awarded is just reasonable and fair. *Per Contra*, learned Counsel for the appellant/claimant urged that the learned Tribunal has erroneously held contributory negligence on the part of the appellant and it was the driver of the Offending vehicle who was at fault. In this regard, reliance was placed upon a decision in the case of **Sudhir Kumar Rana v. Surinder Singh**<sup>11</sup>. It was further submitted that a battery operated Scooty can be driven without a licence. Lastly, it was urged that the learned Tribunal has not assessed the future earning capacity of the appellant and in this regard, learned

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<sup>10</sup>Section 2(10) "driving licence" means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description.

<sup>11</sup>2008 ACJ 1834 SC



counsel for the appellant referred to the case of **MH Uma Maheshwari v. United India Insurance**<sup>12</sup>.

**ANALYSIS AND DECISION:**

10. Having heard the learned counsels for the parties and on perusal of the record including the digitized trial court record, unhesitatingly, this Court finds that the present appeal is devoid of any merits.

11. First things first, there is a categorical finding of facts given by the learned Tribunal that it was the minor son of the appellant/claimant who was driving the Scooty, which was evidently registered in the name of the present appellant/claimant and that PW-5/Archit, who was driving the vehicle, was not legible to hold the licence of the vehicle and in such a situation, it was the responsibility of the appellant/claimant and she should not have allowed her son to drive the motor vehicle on a public road.

12. In the considered view of this Court, the learned Tribunal was very liberal in holding the appellant/claimant to be guilty of contributory negligence to the extent of 35% out of the total amount of compensation awarded, which decision is based on sound legal principles and has been held in umpteen number of precedents for which, reference can be made to a decision in the case of **Jawahar Singh v. Bala Jain**<sup>13</sup>, wherein it was held as under:

“14. We cannot shut our eyes to the fact that it was Jatin, who came from behind on the motorcycle and hit the scooter of the deceased from behind. The responsibility in causing the accident was, therefore, found to be solely that of Jatin. **However, since Jatin was a minor and it was**

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<sup>12</sup>(2020) 6 SCC 400

<sup>13</sup>(2011) 6 SCC 425



the responsibility of the petitioner to ensure that his motorcycle was not misused and that too by a minor who had no licence to drive the same, the Motor Accidents Claims Tribunal quite rightly saddled the liability for payment of compensation on the petitioner and, accordingly, directed the Insurance Company to pay the awarded amount to the awardees and, thereafter, to recover the same from the petitioner.”

13. Further, reference can be had to a decision in the case of **Naveen Kumar v. Vijay Kumar**<sup>14</sup> wherein it was held as under:

“13. The consistent thread of reasoning which emerges from the above decisions is that **in view of the definition of the expression “owner” in Section 2(30), it is the person in whose name the motor vehicle stands registered who, for the purposes of the Act, would be treated as the “owner”. However, where a person is a minor, the guardian of the minor would be treated as the owner.**

14. That being the case, insofar as the assessment of compensation is concerned, this Court finds that the learned Tribunal has rightly alluded to the decision in the case of **Raj Kumar v. Ajay Kumar**<sup>15</sup> and the learned counsel for the appellant hardly made any challenge to the award or compensation towards reimbursement of medical expenses, pain and suffering, conveyance and special diet, attendant charges besides loss of income during the treatment period.

15. As regards the compensation towards loss of functional disability, it would be expedient to reproduce the reasons recorded by the learned Tribunal, which read as under:

19. Lose of disability: Petitioner is entitled for Compensation under this head as she has suffered 46% permanent disability in relation to her upper limb. Ld. Counsels for the Respondents have argued that this disability of injured cannot be considered for whole body in terms of same percentage as per disability certificate and she is not entitled for

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<sup>14</sup>(2018) 3 SCC 1

<sup>15</sup>(2011) 1 SCC 343



compensation to same extent of disability. However, the purpose of permanent disability; certificate is to determine the actual as well as functional disability suffered by the injured during the 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) 6SCC 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 of 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".

20. 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 46%, but it is not covered under Schedule I of the Workman's Compensation Act, 1923 and functional disability may be definitely less than it. 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 @ 25%, Future damages are also to be determined as per 25% permanent disability.

21. Further, the multiplier of the damages has to be determined as per *Saria Verma v. DTC*, (2009) .6 SCC 121. However, the determination of the age of the petitioner .is necessary to apply this multiplier. The age of injured as per her Aadhar Card and PAN Card was 40 years on the date of accident. The multiplier for age group between 36 - 40 years is 15 and the loss of income of the petitioner has to be determined as per this age. Now the income of the injured has to be determined. To prove the income, injured has proved ITR for 3 financial years i.e. 20.10 to 2013 and Tax income at the time of accident was Rs. 4,82,029/- pa. Since this income of the injured has been proved by the income tax department, accordingly there is no reason to disbelieve and is considered as annual income of the injured. The 25% of Rs. 4,82,029/- would be Rs. 1,20,507/-. An additional 25% income i.e. Rs 30,127/- 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, this loss, of income by permanent disability and future damages have to be multiplied-by multiplier:15. In fact, the total loss would be Rs.  $1,20,507 + 30,127 = 1,50,634 \times 15 = \text{Rs. } 22,59,510/-$ .

16. *Ex facie*, the learned Tribunal rightly applied the parameters laid down by the Supreme Court in the case of **National Insurance Company v. Pranay Sethi**<sup>16</sup>. The learned Tribunal has considered the increase in future income by taking an amount of Rs. 30,127/- and it is the own case of the appellant/claimant that she was self-employed as a Finance Advisor with *M/s Birla Sun Life Insurance Company Ltd.* and the finding that the physical disability was such that did not hinder her normal consultancy functions, cannot be said to be flawed. Hence, no interference is called for.

17. In view of the above, this Court finds that the learned Tribunal has not committed any grave irregularity, illegality or perversity in making assessment of the compensation in a fair and reasonable manner.

18. Hence, the present appeal is dismissed.

**DHARMESH SHARMA, J.**

**AUGUST 09, 2024**  
VLD

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<sup>16</sup>(2017) 16 SCC 680