



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 22nd January, 2024**
Judgment pronounced on : 5th March, 2024
+ **MAC. APP. 615/2015**
U.P. STATE ROAD TRANSPORT CORPORATION & ANR
..... Appellants
Through: Mr. Manoj Sharma, Adv.

versus

SANJAY KUMAR **..... Respondent**
Through: Mr. Piyush Beriwal and Mr.
Nikhil Kumar Chaubey, Advs.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This judgment shall decide the present appeal preferred by the appellants/Uttar Pradesh State Transport Corporation (UPSRTC) under Section 173 of the Motor Vehicles Act, 1988¹, assailing the Impugned order dated 18.05.2015 passed by the learned Motor Accident Claims Tribunal, Central, Delhi² in suit No. 109/2011³, titled as 'Sanjay Kumar vs. Subhash Chander', whereby the learned Tribunal granted compensation in favour of the claimant.

FACTUAL BACKGROUND:

2. Briefly stated, it was the case of the claimant that on 15.08.2010 at about 1:30AM, Sanjay Kumar/claimant, was driving a TATA-407 Tempo bearing registration No.HR-46-A-8402 and when he reached at

¹ MV Act

² Tribunal

³ Claim Application



village Netrampuri, Sikandarabad, U.P., suddenly a bus bearing registration No. UP-75-K-9332 (hereinafter referred to as the 'offending vehicle'), driven by Respondent No.1/Subhash Chander/driver⁴ (appellant herein) at a very high speed, in a rash and negligent manner, hit the tempo. Consequently, the petitioner/victim/Sanjay Kumar sustained grievous injuries and an FIR No.340/2011 was registered on 15.08.2010 at PS Sikandarabad, U.P. regarding the accident. The injured/claimant was admitted at Civil Hospital, Bulandshahar, U.P. for treatment but was immediately referred to Safdarjung Hospital, New Delhi, and was discharged on 28.08.2010. As a result, the claimant filed a claim petition on 17.12.2013 seeking compensation.

3. The respondent No.1/Subhash Chander and respondent No.2/Depot Manager of UP Roadways/owner⁵ jointly filed their written statements, whereby negligence on the part of respondent No.1 was denied stating that he was driving the bus at a normal speed from Etawah to Delhi and that the tempo driver coming from the opposite direction in a rash and negligent manner, tried to overtake the bus. Further, it was submitted that the petition was bad for non-joinder of parties and misjoinder of necessary parties. The petitioner, on the other hand, placed several documents including the medical bills and

⁴ Section 2(9) of MV Act: "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;

⁵ Section 2(30) of MV Act: "owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement;



hospital receipts so as to show his critical condition during the course of the treatment.

PROCEEDINGS BEFORE THE TRIBUNAL AND IMPUGNED ORDER:

4. Based on the pleadings, the following issues were framed by the learned tribunal:

- i. Whether the petitioner Sh. Sanjay Kumar had suffered grievous injuries in road traffic accident on 15.8.2010 at about 1:30 am due to rash and negligent driving of the vehicle bearing registration no. UP-75-K9332 by Respondent no.1?
- ii. Whether the petitioner is entitled to any compensation, if so, to what amount and from whom?
- iii. Relief.”

5. The petitioner examined himself as PW-1 and further proved the original referral letter issued by the Civil Hospital, Bulandshahar, UP for treatment at the Safdarjung hospital, New Delhi. During the cross examination, he clarified that he was driving the vehicle/tempo at a speed of 40-50 Km per hour and further testified that he had no documentary evidence/proof to show that he was earning Rs.8000/- wages per month. It was brought in the evidence of PW-2/Dr. Aseem Taneja, that the petitioner had suffered 86% permanent disability as per the disability certificate (Ex.PW2/B), which is unlikely to improve in his lifetime. The germane observations have been reproduced under:

“During cross-examination he clarified that he was going from Sikandarabad to Bulandshahar while driving TATA 407 bearing registration No. HR 46A 8402 at a speed of 40-50 Kms. per hour. He denied that the accident occurred due to his negligence or that he was driving the tempo at a speed of 60-70 Kms. Per hour. He further stated that he had no documentary proof to show that he was earning Rs. 8,000/- per month.



PW2 Dr. Aseem Taneja proved the disability certificate issued to petitioner (Ex.PW2/B). during cross examination he stated that the disability is not likely to improve and the petitioner would not be able to walk and run as a normal person throughout his life.”

6. Regarding Issue No.1, learned Tribunal laid emphasis on the site plan, which was prepared during the course of investigation. Also, the testimony of P1W1/Sanjay Kumar/claimant was taken into consideration. Based on the site plan, the learned Tribunal came to the conclusion that respondent No.1 was wrongly overtaking some other vehicle and that the accident took place due to the sole negligence on the part of respondent No.1. It would be expedient to reproduce the reasons given by the learned Tribunal:

“It is pertinent to note that testimony of PW1 Sanjay Kumar could not be dented during cross-examination. The testimony of PW1 has to be seen in conjunction with the certified copy of the Site Plan which was prepared during the course of investigation. The Site Plan clearly points out that the bus crossed over to the other side of the lane which was meant for the approaching traffic wherein the TATA 407 was driven by petitioner. The curve in which the bus moved on the other side of the lane at the time of accident reflects that in fact Respondent No. 1 was wrongly overtaking some other vehicle and the accident had taken place due to sole negligence of the offending bus. It is difficult to presume that TATA 407 had moved on the other side of the lane in the process of overtaking a truck as claimed in the evidence of RIW1. The evidence of RIW1 is self serving and untrustworthy in view of circumstances pointed out above and does not inspire confidence.”

7. As regards the assessment of income of the claimant, the learned Tribunal was of the view that there was no document or any other evidentiary proof on the record so as to show that the petitioner was earning Rs. 8000/-per month, although it was submitted that there



was a valid Driving Licence⁶. The learned Tribunal assessed the income of the claimant @ Rs.6,448 as per the minimum wages of a skilled labourer as on 15.08.2010. The relevant observations have been reproduced below:

“At the time of accident, petitioner claims to be earning Rs.8,000/- per month. Counsel for petitioner has candidly admitted that there is no document to show that the petitioner was drawing a salary of Rs.8,000/- per month. He submits that the petitioner was in possession of driving licence and as such the minimum wages of skilled labourer as on 15.08.2010 @ Rs.6,448/- per month may, be considered for the purpose of compensation.”

8. Regarding the functional disability, the tribunal, while considering the fact that the petitioner had suffered 86% permanent disability, which is unlikely to improve, as also the fact that the petitioner is a driver by vocation and would not be able to take up the same vocation throughout his life, assessed the functional disability @ 60% for the purpose of assessment of the compensation. Lastly, the tribunal while considering all the expenses including the loss of earning capacity, amenities and expectation of life, pain and suffering, medical treatment and other related expenses, awarded a sum of Rs.9,09,624/- as compensation with interest @ 9% p.a. The tribunal concluded its findings by stating that respondent No. 1 & 2, who are the driver and registered owner of the offending vehicle respectively, are jointly and severally liable to make the payment.

⁶ Section 2(19) of MV Act: “learner’s licence” means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive as a learner, a motor vehicle or a motor vehicle of any specified class or description;



GROUND OF APPEAL:

9. The impugned order has been assailed by the appellants *inter alia* on the grounds that no site plan was ever filed by the respondent/claimant so as to show the exact position of the vehicle at the time of the incident and the learned tribunal wrongly held that the bus of the appellants was coming from the wrong side. Further, it was contested that the claimant was the only witness who stepped into the witness box and there was no corroboration of his testimony. Another objection raised by the appellants is that there was no document produced on the record with respect to the employment details of the respondent. Lastly, it was assailed that the learned Tribunal relied on the driving licence of the respondent to determine his age, which was unknown as also the fact that his driving licence was not verified from an independent licencing authority⁷. Hence, the present appeal.

LEGAL SUBMISSIONS ADVANCED AT THE BAR:

10. During the course of arguments before the appellate court, the counsel for the appellant relied on **Bijoy Kumar Dugar v. Bidya Dhar Dutta**⁸ of the Supreme Court, wherein the facts and circumstances of the case were similar to the present case and the Apex court reaffirmed the decision and observations of learned tribunal that where two vehicle are coming from the opposite directions and there is a possibility of a head-on collision, then in that case the drivers of both the vehicles should be held responsible. The counsel for the appellant vehemently argued on this aspect and

⁷ Section 2(20) of MV Act: "licencing authority" means an authority empowered to issue licences under Chapter II or, as the case may be, Chapter III.

⁸ (2006) 3 SCC 242



submitted that the respondent shall be held liable for this incident. It would be expedient to re-produce the observations in the aforementioned judgment:

“The Maruti car being driven by the deceased Raj Kumar Dugar and the offending bus had a head-on collision. MACT has not accepted the evidence of PW 2 to prove that the driver of the offending bus was driving the vehicle at abnormal speed. If the bus was being driven by the driver abnormally in a zigzag manner, as PW 2 wanted the Court to believe, it was but natural, as a prudent man, for the deceased to have taken due care and precaution to avoid head-on collision when he had already seen the bus coming from the opposite direction from a long distance. It was head-on collision in which both the vehicles were damaged and, unfortunately, Raj Kumar Dugar died on the spot. MACT, in our view, has rightly observed that had the knocking been on one side of the car, the negligence or rashness could have been wholly fastened or attributable to the driver of the bus, but when the vehicles had a head-on collision, the drivers of both the vehicles should be held responsible to have contributed equally to the accident.”
(Paragraph 12)

ANALYSIS AND DECISION:

11. I have given by thoughtful consideration to the submissions advanced by learned counsels for the rival parties at the Bar. I have also perused the relevant records of the case including the digitized Trial Court record.

12. First things first, the findings recorded by the learned Tribunal holding respondent No.1/driver to be responsible for causing the accident, are without any blemish and unassailable. A careful perusal of the testimony of PW-1/injured would show that he categorically deposed that the offending bus had crossed over from the other side of the lane, which was meant for the approaching traffic while the injured was driving the TATA 407 on the correct side of the road. It is



evident from the site plan of the place of occurrence placed and proven on the record that the offending bus came from the other side of a curved road and went over the middle of the road on the other side, causing a head-on collision with the vehicle which was being driven by the injured. Except for a bold suggestion in the cross-examination of PW-1 that he was driving the tempo at a speed of 60-70 km/hr., there were no cracks in his testimony as to the manner in which the accident had occurred.

13. As regards the challenge by the appellant with respect to the quantum of compensation being on the exorbitant side, the same is completely misconceived and untenable in law. The learned Tribunal, in the face of the fact that there was no documentary proof that the respondent/claimant was earning Rs. 8,000/- per month, adopted a correct approach in law to reckon the minimum wages provided for a skilled labourer, as evidently, the respondent/claimant was a driver and the same was assessed @ Rs.6,448/- per month. It would be a repetition that as per PW-2/Dr. Asim Taneja, the respondent/claimant suffered 86% disability as per the disability certificate (Ex. PW-2/B). The disability is in relation to both lower limbs, described as post traumatic stiffness in right knee and ankle c̄ ilizarov ring fixati on in right leg and fixed deformity, which was opined to be 90%. It was the unchallenged and uncontroverted testimony of PW-2 that the disability was such which would remain throughout the life of the claimant and would not improve. It is not understandable as to how the Tribunal reckoned the disability to be 88%. Secondly, no justifiable reasons have been given by the learned Tribunal in



reckoning the functional disability to be 60%. The respondent/claimant was evidently working as a driver and because of the disability suffered, he would be completely ruled out of getting any employment as a driver, which he could have easily enjoyed till the age of at least 60 years. This Court in '*New India Assurance Co. Ltd. v. Moharman*⁹ ; *New India Assurance Co. Ltd. Pushkin Tiwari*¹⁰ ; *New India Assurance Co. Ltd. v. Furkan @ Mohd. Furkan*¹¹ besides *New India Assurance Co. Ltd. v. Sanjay Kumar Dass @ Sanjay Kumar Singh*¹², decided by a common judgment dated 22.01.2024, reiterated the fact that once a person has suffered the functional disability in total, he would not be able to secure employment in the same field where he used to work if he had not been injured.

14. This Court in an earlier judgment, in such facts and circumstances where a driver had suffered the permanent disability ruling him out of any job as a driver in the future or remainder of his life, considered the decision in the case of **Oriental Insurance Company Limited v. Mohd. Nasir**¹³.

15. Further, this court referred to the decision in **Raj Kumar v. Ajay Kumar**¹⁴, wherein it was observed:

“19. We may now summarise the principles discussed above:

- (i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.
- (ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of

⁹ FAO 17/2021

¹⁰ FAO 21/2021

¹¹ FAO 305/2022

¹² FAO 172/2021

¹³ (2009) 6 SCC 280

¹⁴ (2011) 1 SCC 343



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loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).

(iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.”

16. In view of the aforesaid facts and considering the minimum wages of the claimant as taken by the learned Tribunal i.e., Rs.6,448/-, the annual income of the injured comes to Rs. 77,376/-. Further, as the claimant was 32 years of age at the time of accident, an addition of 40% towards loss of Future Prospects has to be reckoned in terms of the decision in **National Insurance Co. Ltd. v. Pranay Sethi**¹⁵, which brings the income to Rs. 1,08,326/-. Further, applying the multiplier of ‘16’ as per **Sarla Verma v. DTC**¹⁶, the total loss of future earning capacity is assessed at Rs. 17,33,216. Thus, the total compensation has been assessed to Rs. 18,24,238/-. Accordingly, the compensation is tabulated as under:

S. No.	Head	Amount
1.	Annual Income	Rs.77,376/- (6,448 x 12)
2.	Addition towards future prospects	Rs. 30,950/- (40% of the income i.e. 77,376)

¹⁵ (2017) 16 SCC 680

¹⁶ (2009) 6 SCC 121



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3.	Loss of earning	Rs. 1,08,326/- (77,376+30,950)
4.	Multiplier	16
5.	Total Loss of future earning at 100% loss of functional disability.	Rs. 17,33,216/- (1,08,326 x 16)
6.	Pain and suffering	Rs. 10,000/-
7.	Medical expenses	Rs. 46,022/-
8.	Conveyance	Rs. 10,000/-
9.	Special Diet	Rs. 10,000/-
10.	Attendant charges	Rs. 15,000/-
	Total Compensation	Rs. 18,24,238/-

17. Therefore, in view of foregoing discussion, this Court *suo moto* enhances the compensation for loss of earnings capacity from Rs. 9,09,623.81 to Rs.18,24,238 (Rupees Eighteen Lacs Twenty Four Thousand Two Hundred Thirty Eight Only), which shall be payable to the respondent No.1/claimant with interest @ 9% p.a. from the date of filing of the petition till realisation. The amount of compensation be released to the respondent/claimant after adjusting the amount of compensation with interest already paid to the respondent/claimant in terms of the previous order dated 18.05.2015. Interim order shall stand vacated. The amount of compensation be deposited by the appellant/UPSRTC with the learned Tribunal within four weeks from today, failing which, the appellant shall be liable to pay penal interest @ 12% p.a. from the date of this decision till realisation.

18. The appeal stands disposed of.

DHARMESH SHARMA, J.

MARCH 05, 2024/sp/ck