



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 6th March, 2024**
Judgment pronounced on: 12th March, 2024

+ **MAC.APP. 614/2015**

DHEERAJ GUPTA

..... Appellant

Through: **Ms. Aruna Mehta & Mr. Sanjeev Mehta, Advs.**

versus

AJAY KUMAR & ANR (BHARTI AXA GENERAL INSURANCE CO. LTD)

..... Respondents

Through: **Mr. Vaibhav Verma, Mr. Ved Vyas Tripathi & Mr. Pramod Sah, Advs. for R3.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The appellant/injured/claimant has preferred this statutory appeal under Section 173 of the Motor Vehicles Act, 1988 as amended upto date¹, assailing the quantum of compensation awarded *vide* impugned judgment-cum-award dated 08.04.2015 passed by the learned Presiding Officer, Motor Accident Claims Tribunal, New Delhi².

2. Shorn off unnecessary details, the appellant met with an accident on 01.03.2013, when his motorcycle bearing No. DL-4SBY-6546 was involved in a head-on collision with the offending car

¹ MV Act

² Tribunal



bearing No. DL-4CAQ-5071, being driven by respondent No.1/Ajay Kumar on the Airport Road near Railway Lane, Sector-01, Palam Colony, New Delhi. He filed a claim petition under Section 166 read with Section 140 of the MV Act seeking compensation and it was brought to the fore that he had suffered a permanent disability to the extent of 54% as per the medical certificate (Ex. PW-1/11) in relation to right lower limb.

3. The learned Tribunal, while holding that the motor accident resulted in grievous injuries as also permanent disability to the claimant, found that it was a case of a head-on collision and based on the site plan prepared by the police during the course of investigation in respect of the accident that resulted in lodging of FIR No. 64/2013 under Sections 279/338 of the Indian Penal Code, 1860³ at PS Delhi Cantt., the injured claimant was guilty of contributory negligence to the extent of 50% resulting in the motor accident. Eventually, the appellant/claimant was awarded the compensation by the learned Tribunal under different heads and itemised as under:

Heads	Amount
Medicine and Medical treatment	Rs. 7,50,000/-
Pain and suffering	Rs. 60,000/-
Loss of amenities of life	Rs. 20,000/-
Disability	Rs. 25,000/-
Loss of marriage prospects	Rs. 15,000/-
Conveyance	Rs. 30,000/-
Special Diet	Rs. 10,000/-

³ IPC



Attendant charges	Rs. 18,000/-
Loss of income	Rs. 6,54,000/-
Total	Rs. 15,82,000/-

4. Thus, after arriving at a total compensation of Rs.15,82,000/-, 50% was deducted towards contributory negligence and the claimant has been awarded Rs. 7,91,000/- with interest @ 9% p.a. from the date of filing of the Detailed Accident Report (DAR) till its realisation, including the interim award. Evidently, as the offending car was insured with respondent No.2/insurance company, the liability to pay the compensation has been fastened upon them.

LEGAL SUBMISSIONS ADVANCED AT THE BAR:

5. Learned counsel appearing for the appellant/claimant urged that the learned Tribunal adopted a flawed approach in holding the appellant guilty of contributory negligence merely on the basis of the site plan prepared by the Investigating Officer (IO) in the course of investigation arising out of FIR No.64/2013. Reference in this regard was made to the decision in the case of **G. Ravindranath v. E. Srinivas**⁴.

6. As regards the quantum of compensation, it was strenuously urged that the learned Tribunal did not grant any compensation towards the loss of earning/functional incapacity, and that functional disability has only been assessed @ 25%, thereby completely overlooking the evidence of the doctor, who testified that although the appellant would be able to stand on his feet, he could barely walk with

⁴ (2013) 12 SCC 455



his effective leg/right limb without help or a stick. It was pointed out that the appellant suffered as many as six fractures, remained under prolonged treatment and no compensation towards loss of income has been awarded.

7. Further, arguing that the amount of compensation for pain and suffering is on a lower side, it was pointed out that no compensation has been awarded towards loss of marital prospects. It was further urged that during the course of the present appeal, additional evidence has been led and AW-1/Dr. Hans U. Nagar was examined, who stated that based on the rates in 2014, additional expenditure to the extent of Rs.2,93,200/- would be warranted towards the future medical treatment of the appellant as per the certificate (Ex. PW-1/5) and it was also deposed by the witness that the said estimates would be required to be enhanced by 20-25% based on the present market norms of medical treatment.

8. *Per contra*, learned counsel for respondent No.2/Insurance Company urged that the appellant was guilty of contributory negligence inasmuch as it was a single lane road and instead of driving on the extreme left side of the road, he was driving in the middle of the road which resulted in a head-on collision. Alluding to the mechanical inspection report of the two vehicles during the course of the investigation by the police, it was pointed out that the damage was caused to the right side of the body of the vehicle.

9. Lastly, it was further urged that no evidence has been led by the appellant that he has suffered any loss in the nature of diminished marital prospects and the cost of future medical treatment is



exaggerated as the appellant is seeking treatment from a private hospital instead of going to a government hospital. *Inter alia*, it was urged that the compensation for loss of earning capacity or future prospects @ 25% is supported in terms of the decision in **Rajkumar v. Ajay Kumar**⁵.

ANALYSIS AND DECISION

10. I have given my thoughtful consideration to the submissions advanced by the learned counsels for the rival parties at the Bar. I have also perused the record including the digitized Trial Court Record.

11. First things first, insofar as the appellant has been held guilty of contributory negligence, it would be relevant to reproduce the reasons given by the learned Tribunal in this regard, which read as under:

“15. The respondent No.1 and 2 had filed the written statement averring that the accident was not caused by the respondent No.1 but by some other person, he just happened to pass from there and was falsely implicated in the case. It was averred that no accident was caused by the respondent No.1 but by some other person, the petitioner was coming from the opposite direction and was hit by some other vehicle from behind and due to that the vehicle of the petitioner hit against the car of the respondent No.1 and he fell down on the road and received injuries and the respondent No.1 was falsely implicated. It was averred that the respondent No.1 helped the petitioner and took the petitioner to hospital for medical treatment being a responsible citizen of India. It was averred that the respondent No.1 had been falsely involved in the case just to claim compensation. During cross-examination by the learned counsel for the insurance company PW1 stated that he was riding his motorcycle when he met with an accident. He stated that it was a single road on which the vehicles were coming and going. He admitted that it was a head on collision volunteered he was on his side. He stated that he was removed by an Army person and a passerby. The police had not come on the spot but the police had

⁵ (2011) 1 SCC 343



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come to the hospital. He denied the suggestion that the accident had taken place due to his own negligence. During cross-examination by the learned counsel for the respondent No.1 PW1 denied the suggestion that the accident had taken place due to his own negligence. He denied the suggestion that the driver of the offending vehicle was driving the vehicle with care and caution and he was not at fault. He denied the suggestion that the accident had taken place with some other vehicle or that the offending vehicle had been falsely implicated to get the compensation. Thus PW1 stated that he was riding his motorcycle when he met with an accident. He stated that it was a single road on which the vehicles were coming and going and a perusal of the site plan also shows the same.

16. It is pertinent that PW1 admitted that it was a head on collision and he had even deposed about the offending vehicle hitting his vehicle from the front. He had volunteered that he was on his side but a perusal of the site plan shows that the accident had taken place almost in the middle of the road and not towards the side of the petitioner. Apart from that mainly suggestions were put to him which he denied. A suggestion was put to him that the accident had taken place with some other vehicle which he denied and it is seen that even as per the case of the respondent No.1 the vehicle of the respondent No.1 and the motorcycle of the petitioner had collided though the stand taken by the respondent No.1 was that the petitioner was hit from behind by another vehicle and thereafter his vehicle hit the vehicle of the respondent No.1. The mechanical inspection report of the motorcycle shows that the right side front shocker was freshly broken, the right side handle and silencer and leg guard were freshly damaged, brake pedal and foot rest were freshly damaged and the horn was freshly broken. Thus there was damage to the motorcycle from the front side which belies the contention of the respondent No.1 that another vehicle had hit the motorcycle of the petitioner from behind. The mechanical inspection report of the offending car shows extensive damage to the front side of the car and as such it cannot be disputed that the said vehicle was involved in the accident. The respondent No.1 who is the driver and owner of the offending vehicle has not adduced any evidence to dispute the version put forth by the petitioner or in the criminal record. The criminal record has been placed on record which shows that the respondent No.1 has been charge sheeted for the offence under Sections 279/338 IPC. In **Basant Kaur and others v. Chattar Pal Singh and others** 2003 ACJ 369 MP (DB) it was observed that registration of criminal case against the driver of the offending vehicle was enough to record a finding that the driver of the offending vehicle was



responsible for causing the accident. The respondents have also not led any evidence to prove any other version of the accident. There is no evidence from the respondents to disprove the particulars of the accident or the involvement of vehicle No. DL-4CAQ-5071. In view of the testimony of PW1 and the documents on record which have remained un rebutted, the negligence of the respondent No.1 has been prima facie proved. At the same time it is seen that it was a head on collision and from the material on record it is clear that the petitioner was also not able to control his vehicle and had contributed equally to the accident. The Hon'ble Supreme Court in **Bijoy Kumar Dugar v. Bidya Dhar Dutta II** (2006) SLT 651 observed:

“The MACT has not accepted the evidence of PW2 to prove that the driver of the offending bus was driving the vehicle in abnormal speed. If the bus was being driven by the driver abnormally in a zigzag manner, as PW2 wanted to believe the Court, 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 from a long distance coming from the opposite direction. It was head-on collision in which both the vehicles were damaged and unfortunately, Raj Kumar Dugar died on the spot. The MACT, In our view, has rightly observed that had it been the knocking 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.”

Accordingly the negligence of the petitioner is apportioned as 50% and of the respondent No.1 also as 50%.”

12. At the outset, the aforesaid reasons given by the learned Tribunal in holding the appellant guilty of contributory negligence are perverse and unsustainable in law. The appellant/Dheeraj Gupta, who was examined as PW-1 during the course of proceedings/trial, in his evidence by way of an affidavit filed as Ex. PW-1/A, categorically deposed that he was driving his motorcycle when all of a sudden, the



offending car came from the opposite side and hit him from the front side with a powerful impact. Although a suggestion was given in his cross-examination by the learned counsel for the Insurance Company that it was a head-on collision which was acknowledged by the witness, he deposed that he was on his side of the road.

13. Indeed, the accident occurred on a single lane road and also a busy one, whereat apparently lots of vehicles were coming and going at about 8:30 A.M. on that fateful day. There was no suggestion either by learned counsel for the Insurance Company for that matter, or by the learned counsel for respondent No.1/driver⁶, that it was the appellant, who in any manner, contributed to the accident. Mere bald suggestions given during the cross-examination of the witnesses have no value unless something tangible is shown. That being the case, in a situation where the witness was not even confronted with the site plan prepared by the IO during the course of the investigation and not prodded about the findings recorded by the IO, it cannot be assumed that the appellant was at fault or contributed to the accident in any manner. It is not even clear as to at whose instance, the IO prepared the site plan. Further, the IO was not even called in the witness box by the respondent No.1/driver/owner or for that matter, by the Insurance Company. Reference can be invited to the decision in the case of **Mangla v. Oriental Insurance Company Limited**⁷.

⁶ 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;

⁷ 2018 ACJ 1300 SC



ASSESSMENT OF COMPENSATION:

14. Without further ado, the learned Tribunal has patently erred in assessing the quantum of compensation on various counts. The appellant was admittedly 20 years of age at the time of accident. Further, PW-3/Satish Kumar was examined and he brought out that the appellant was employed with them for three months and there is no challenge to the assumption of gross salary of Rs.15,090/- per month by the learned Tribunal. However, finding certain discrepancies in the testimony of PW-3 i.e., employer and also noticing that the appellant had got employed as an Executive only three months prior to the accident, his salary/income was fairly assumed to be Rs.11,000/- per month.

LOSS OF EARNING CAPACITY/FUNCTIONAL DISABILITY:

15. PW-2/Dr. Atul Sareen, Specialist Orthopaedics, was examined from DDU hospital, who deposed that he was a member of the Disability Board, which examined the patient/Dheeraj Gupta and deposed about the disability certificate (Ex. PW-1/11) bringing to the fore that the appellant was a case of polytrauma with stiffness of right hip and knee joint with permanent physical disability of 54% in relation to right lower limb. He categorically deposed that the disability was permanent in nature and although the patient would be in a position to do a standing job, it would not be possible for him to stand without any support on both legs, but in case he has to stand on his effective leg i.e., right limb, he would require a stick for walking or moving around. It was further deposed that there was no possibility of any improvement in the loco-motor disability of the patient and he



would be having problems in sitting cross legged, squatting and also climbing stairs. A bald suggestion was given to PW-2 that there would be no effect on the normal routine, activities of the patient on account of the disability sustained, which was of course denied.

16. In view of the aforesaid evidence, there is no gainsaying that the appellant, who was a young boy had suffered a permanent locomotive disability, which would not only hamper his daily routine in life but also his prospects to move around and enjoy a normal life; and the disability would come as an irreparable impediment in getting descent employment and would halt his progression in his career. Hence, this is a fit case where the loss of earning capacity should be reckoned @ 54 % as per the disability certificate. Further, 50% is required to be added towards loss of future prospects as per the decision in **National Insurance Co. Ltd. v. Pranay Sethi**⁸ and a multiplier of '18' would be applied in terms of the decision in **Sarla Verma v. DTC**⁹.

17. Thus, having regard to testimony of PW-1 that he was not able to resume his duty for about 08 months, and therefore, he entailed a loss of monthly salary to the tune of Rs.1,20,720/- which has not been awarded. Considering the young age of the appellant and the fact that he has suffered more than 54% disability, it is a fit case where the compensation for pain and suffering should be enhanced to Rs. 3 Lacs. There is no merit in the plea taken by the learned counsel for the Insurance Company that no evidence has been led with respect to the loss of martial prospects. We are not oblivious to our societal norms,

⁸ (2017) 16 SCC 680

⁹ (2009) 6 SCC 121



which shun physically disabled people, and subject them to various inconvenience and prejudices. Therefore, it would be a fit case where the appellant should be awarded a sum of Rs. 3 Lacs towards loss of marital prospects. As regards the future medical treatment, during the course of proceedings AW-1/Dr. Hans U. Nagar was examined, who deposed that he operated upon the patient Dheeraj Gupta twice between 02.03.2013 and 10.03.2013 for multiple injuries. It would be relevant to re-produce the statement of AW-1/Dr. Hans U. Nagar during cross-examination, which reads as under:

“I operated on patient Dheeraj Gupta twice between 2nd March, 2013 and 10th March, 2013 for multiple injuries comprising of fractures of right humerus, a fracture dislocation of right elbow, compound open fracture of right knee inter condylar and lower end of femur, fracture of lateral malleolus right ankle.

I also implanted plates in right humerus, right knee and right forearm and reconstruction rotation flap to the wound injury to close the wound in the right knee. (plastic surgery).

At this stage, witness is shown rough estimate dated 25.03.2014 i.e. Ex. AW-1/1 (already exhibiting as Ex. PW-1/5 under court record)

Ex. AW-1/1 bears my signature at point ‘A’.

The removal of plates is necessary to decrease the pain but will have no bearing on the disability.

The estimate was given in the year 2014. The present cost of the operation is increased roughly by 20% to 25% of estimate given in the year 2014.”

18. PW-1 categorically testified that the future medical expenses to the tune of Rs.2,93,200/- would be required for removal of implants from the body of the patient as per the certificate Ex. AW-1/1, which is also Ex. PW-1/5 and the cost of such treatment, when weighed at present scales, would come to Rs.3,66,500/-. In all fairness, the appellant is hereby awarded a sum of Rs.4,50,000/- towards future



medical treatment. Accordingly, , the total compensation is arrived at as under:

S. No.	Heads	Amount
1.	Income	Rs. 11,000 (monthly)
2.	Addition towards future prospects	Rs. 5,500 (50% of the income)
3.	Total Annual Income	Rs. 1,98,000/- (16,500 x 12)
4.	Multiplier	18
5.	Total loss of earning with 54% disability	Rs. 19,24,560/- (1,98,000 x 18 x 54/100)
6.	Pain and suffering	Rs. 3,00,000/-
7.	Loss of Marital Prospects	Rs. 3,00,000/-
8.	Future medical expenses	Rs. 4,50,000/-
9.	Loss of amenities of life	Rs. 20,000/-
10.	Conveyance	Rs. 30,000/-
11.	Special Diet	Rs. 10,000/-
12.	Attendant charges	Rs. 18,000/-
13.	Loss of Income	Rs. 6,54,000/-
	Total	Rs. 37,06,560/-

19. Accordingly, the present appeal is allowed and the appellant is awarded a total compensation of Rs. 37,06,560/- (Rupees Thirty Seven Lacs Six Thousand Five Hundred Sixty Only), which shall be payable to him @ 9% per annum from the date of filing of the DAR till its realisation. The entire amount of compensation be deposited by the respondent No.2/Insurance Company with the learned Tribunal within four weeks from today failing which, the insurance company shall be liable to pay penal interest @ 12% per annum from the date of this judgment till realization. The entire amount of compensation be released to the appellant in terms of the directions passed by the learned Tribunal and in any case, 60% of the amount of the



compensation be kept in Fixed Deposit Receipt (FDR) or in an interest-bearing bond for a period of five years.

20. The appeal stands disposed of.

DHARMESH SHARMA, J.

MARCH 12, 2024
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