



2025:DHC:4969



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 19.05.2025

+ **MAC.APP. 1203/2013**
INDERJEET SINGH NEGIAppellant
Through: Mr. Saurabh Seth, Advocate.

versus

SH IRSHAD & ORSRespondents
Through: None.

CORAM:
HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. None appears on behalf of the Respondent/Insurance Company.
2. Given the fact that the matter is pending since the year 2013 and in pursuance of the order dated 08.04.2025, this Court deems it apposite that the matter be taken up for hearing and disposal today.
3. The present Appeal seeks to challenge an Award dated 31.07.2013 passed by the Motor Accident Claims Tribunal-1, New Delhi [hereinafter referred to as "Impugned Award"]. By the Impugned Award, a sum of Rs.57,508/- has been awarded to the Appellant, who is the injured in the present case.
4. Learned Counsel for the Appellant essentially raises two contentions.
 - 4.1 Firstly, it is contended that the finding of the learned Tribunal that the Petitioner has not suffered from any permanent disability is contrary to the record and contrary to the settled law in this behalf. Learned Counsel for the



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Appellant submits that the Appellant was working as a driver in the office of a Senior Counsel when the accident happened. He submits that after the accident, the Appellant has not been able to work as a driver again. He places reliance on the judgment of the Supreme Court in ***Raj Kumar v. Ajay Kumar and Anr.***¹ to submit that where a person suffers an injury in his lower limbs and his vocation is that of a driver, the disability should have been assessed at 100%.

4.2 Secondly, it is contended that the learned Tribunal had held that the issue of negligence of driver of offending vehicle stood proved. Despite the same, a poultry sum was awarded as compensation. He submits that the medical expenses which were incurred on the treatment which had to be undertaken by the Appellant was for more than 4 months and these expenses were disallowed purely on the ground that there was no prescription on record before the learned Tribunal. Learned Counsel for the Appellant submits that the prescriptions were of the Nilkanth Hospital were in fact, part of the Court record before the learned Tribunal.

5. As stated above, none appears on behalf of the Respondents to contest this matter.

6. The learned Tribunal had in the Impugned Award framed two issues:

1. Whether Mr. Inderjeet Singh injured sustained grievous injuries in a road traffic accident on 9.9.09 at red light near MLA Flats Road Gurgaon, Haryana at about 8.15am due to rash and negligent driving of the offending vehicle bearing no. HR-55F-4746(truck) driven by R-1, owned by R-2 and insured with R-3?OPP.

2. Whether the petitioner is entitled to any compensation and if so, from whom and what amount?"

¹ (2011) 1 SCC 343



7. A plea of contributory negligence was taken by the Respondents before the learned Tribunal, however, the Respondents were not able to prove anything to the contrary. In addition, since the Appellant was not cross-examined, this plea could not be proved. The learned Tribunal has thus given a finding that the accident was caused due to negligence of Respondent No.1 (driver of the offending vehicle), thus the Appellant is entitled to compensation. The relevant portion of the Impugned Award is extracted below:

“6. From the pleadings of parties following issues were framed by Ld. Predecessor on 24.1.2011:

1. Whether Mr. Inderjeet Singh injured sustained grievous injuries in a road traffic accident on 9.9.09 at red light near MLA Flats Road Gurgaon, Haryana at about 8.15am due to rash and negligent driving of the offending vehicle bearing no. HR-55F-4746(truck) driven by R-1, owned by R-2 and insured with R-3?0PP.

2. Whether the petitioner is entitled to any compensation and if so, from whom and what amount?

3. Relief.

xxx

xxx

xxx

*13. The case of the petitioner is that on 9.9.2009 the petitioner was going to DLF Phase-4, Gurgaon, Haryana on his motorcycle bearing no. DL-7SAA-5802 and at about 8.15 AM he reached at the red light of MLA Flats, Gurgaon, Haryana and the petitioner was standing at the traffic signal and in the meantime the truck bearing no. HR-55F-4746 came from behind in a rash and negligent manner and hit the left side of motorcycle of petitioner. The petitioner was removed to Neel Kanth Hospital, Gurgaon. It is stated that the case vide FIR no. 160/09 under Section 279/338 IPC was registered at PS DLF Phase-1, District Gurgaon, Haryana. The petitioner appeared in the witness box as PW1 and adduced evidence by way of affidavit Ex. PW1/1. In para 2 of affidavit Ex. PW1/1 the petitioner has, reiterated-the manner of accident as stated in the claim petition. In para 2 of written statement respondents no. 1 and 2 have stated that the accident took place due to sole negligence of petitioner as he stopped the vehicle suddenly on red light without caring for traffic rules and also without switching the indicator of his motorcycle. **Although in the written***



statement respondents no. 1 and 2 have stated that the accident took place due to negligence of petitioner himself but respondents no. 1 and 2 have preferred to remain exparte and they have not cross-examined the petitioner. In the cross-examination of petitioner/PW1 respondent no. 3. has also not referred to put any question regarding manner of accident. The testimony of PW1/ petitioner regarding manner of accident has remained un-rebutted. The petitioner has filed on record the certified copies of criminal record which consist of final report under Section 173 Cr. PC in case FIR No. 160/09 under Section 279/338 IPC, PS DLF Phase-1, District Gurgaon, Haryana, copy of statement of petitioner on the basis of which Asal Tehrir was prepared, copy of site plan, copy of seizure memo of truck, copy of seizure memo of documents of truck no. HR-55F-4746, copy of driving licence of respondent no. 1, copy of insurance policy of offending vehicle, copy of MLC of petitioner prepared at Neel Kanth Hospital, copy of FIR no. 160/09, under Section 279/338 IPC, PS DLF Phase-1, District Gurgaon, Haryana. As per FIR case was registered on the complaint of petitioner wherein he has reiterated the manner of accident as stated in the claim petition. As per charge sheet respondent no. 1 has been charge sheeted for the offences under Section 279/338 IPC. The respondents have not brought on record any other version of accident. Thus in view of the testimony of petitioner/PW1 and documents on record, the negligence of respondent no.1 has been prima facie proved. Issue no. 1 is accordingly decided in favour of petitioner against the respondent.

14. As the negligence of driver has been proved, petitioner is entitled to compensation."

[Emphasis Supplied]

7.1. Thus, issue No.1 as framed by the learned Tribunal has been decided in favour of the Appellant. No challenge has thus been raised before this Court qua this issue. In any event, the finding is based on the FIR and the charge sheet filed.

8. On the aspect of compensation for medicines and medical treatment, the learned Tribunal has given a finding that since prescription slips of a medical practitioner were not placed on record, the medical expenses of the Appellant could not be proved. Thus, the medical expenses were not awarded to the Appellant.



8.1 This finding is however not born from the record and is challenged by the Appellant before this Court. The record shows that the prescription of RG Urology and Laparoscopy Hospital is on record and runs for several pages for the period from 09.09.2009 to 03.02.2010. Further, the prescription slips of the doctors do form part of the record.

8.2 For the sake of convenience a tabular chart setting out the detailed medical record of the Appellant, which forms part of the learned Tribunal record is below:

S. No.	PROOF OF EXPENSE	ELECTRONIC PAGE OF LCR
1.	Original Admission Sheet dated 09.09.2009 issued by Neelkanth Hospital	109
2.	Medico Legal Report dated 09.09.2009 issued by Neelkanth Hospital	110
3.	Original Discharge Summary dated 11.09.2009 issued by Neelkanth Hospital	353
4.	Original Receipts of Medicines purchased from Medicine Shop on prescription of Neelkanth Hospital	123-126, 129-132, 135, 138-139
5.	Original Bills towards medicines purchased from Neelkanth Hospital	127, 134, 144, 146, 147, 148, 151-157
6.	Original Receipts from Clinic of Dr. M.K. Sarkar	158-172
7.	Original Prescriptions and Treatment Sheet from Neelkanth Hospital	122, 128, 133, 136, 137, 140-143, 145, 149-150, 339
8.	Original Medical Certificate by Treating Doctor	336 - 337

9. A perusal of the Impugned Award reflects that these documents have



not been considered by the learned Tribunal while awarding compensation under the head of medicines and medical treatment.

10. On the aspect of loss of income, learned Tribunal has given a finding that the Appellant has not proved that he has suffered from any permanent disability or the nature of injuries sustained by him were such that on account of the said injuries the Appellant might have not been able to perform his avocation in future or his efficiency will be reduced and his capacity to earn will be affected. Thus, no amount has been awarded to the Appellant under the head of loss of income. The relevant extract of the Impugned Order is reproduced below:

"21... The petitioner has not proved his income by examining any witness to prove his salary certificate and the petitioner has also not proved any document of his educational qualifications. In the circumstances the income of petitioner shall be taken as minimum wages of skilled worker as on 1.8.2009 which were Rs. 4377/- per month. The petitioner has stated in para 5 of his affidavit Ex. PW1/A that he could not perform his duties for a period for 7 months and on that account he has suffered loss of income. The petitioner has not proved any medical advice by which he was advised rest for any specific period. However looking at the nature of injuries sustained by petitioner notice can be taken of the fact that the petitioner might not have been able to perform his avocation for a period of 4 months. Consequently the petitioner shall be entitled to Rs.4377/-x4= Rs.17,508/- towards loss of income.

22. The petitioner has not proved that he has suffered any permanent disability or the nature of injuries sustained by him were such that on account of said injuries, he may not be able to perform his avocation in future or his efficiency will be reduced and his capacity to earn will be affected. In the circumstance, no amount is being awarded on account of future loss of income."

[Emphasis Supplied]

11. It is the case of the Appellant that Appellant was working as a driver in the office of a Senior Counsel when the accident happened and after the accident, the Appellant has not been able to work as a driver again due to the



permanent nature of injuries which have been sustained. Thus, it is submitted that the learned Tribunal has erred in not awarding compensation for loss of future income.

11.1 The Supreme Court in the case of **Raj Kumar** case has held down three steps which have to followed for ascertainment of the effect of the permanent disability on the actual earning capacity. These include:

- (i) to ascertain what activities a claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability;
- (ii) to ascertain his avocation, profession and nature of work before the accident, as also his age;
- (iii) to find out whether (a) the claimant is totally disabled from earning any kind of livelihood, or (b) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (c) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

11.2 The relevant extract of the **Raj Kumar** case is set out below:

“13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on



some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred per cent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of "loss of future earnings", if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not be found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity."

[Emphasis Supplied]

12. An examination of the record reflects that the disability of the Appellant has not been assessed and thus unless the disability is ascertained, the effect of the permanent disability on the actual earning capacity cannot be ascertained.

13. As discussed above, the medical prescriptions of the doctors and other medical records have although been placed on record before the learned Tribunal however, the same have not been considered while passing the Impugned Award. Given the fact that disability of the Appellant is also to be ascertained, this Court deems it apposite to remand the matter for recalculation of the compensation to be awarded to the Appellant.

13.1 Accordingly, in the first instance, the Appellant shall undertake



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assessment of disability in terms of the prescribed procedure/guidelines and obtain a certificate of disability from an authorized hospital in Delhi.

14. Accordingly, and for the reasons as stated above, the Impugned Order is set aside *qua* issue No.2.

15. The parties shall appear before the learned Tribunal on 07.07.2025 to decide issue No.2 *de novo*. Given the fact that this matter has been pending for long, the learned Tribunal is requested to hear the parties and pass an order at the earliest convenience.

15.1 The parties are at liberty to rely on the evidence already available on record as well as the certificate of disability obtained by the Appellant, which the Appellant shall place on record. All the steps taken shall be in accordance with law.

16. The Appeal stands disposed of in the foregoing terms.

17. The parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

MAY 19, 2025/pa/ha

Click here to check corrigendum, if any