2026:AHC:232250

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL FROM ORDER No. - 3898 of 2012

Dr. Devendra Kumar Vashisth

.....Appellant(s)

Versus

Subhash Chand Vatsh And Others

.....Respondent(s)

Counsel for Appellant(s)	:	Deepak Rana
Counsel for Respondent(s)	:	Rahul Sahai, Ravi Agrawal

Court No. - 54

HON'BLE ANIL KUMAR-X, J.

1. Heard Sri Deepak Rana, learned counsel for appellant and Sri Rahul Sahai, learned counsel for respondents are present.

2. The appellant-claimant has preferred the present appeal seeking enhancement of the compensation awarded by the learned Tribunal in MACP No. 437 of 2010, Dr. Devendra Kumar Vashishth Vs. Subhash Chandra Vatsa and Others, whereby a sum of Rs. 2,56,839/- along with interest at the rate of 6% per annum was awarded in his favour.

3. Briefly stated, the case of the appellant-claimant is that on 14.08.2010, he, along with certain other persons, was travelling in Tavera Car bearing registration No. HR-37-B-6987. They were travelling from Agra to Mathura to visit a temple. At about 12:30 p.m., when the aforesaid car reached near Raghunath Cold Storage on Bulandshahr Road, a bus bearing registration No. UP-15-W-9928, coming from the opposite direction and being driven rashly and negligently by its driver, collided with the Tavera car. As a result of the accident, the Tavera car was completely damaged and all its occupants sustained serious injuries.

4. The claimant also sustained injuries and was initially admitted to Anand Hospital, where he remained hospitalised from 14.08.2010 to 24.08.2010. Thereafter, he was admitted to KMC Hospital and Research Centre, Meerut, where he remained under treatment from 24.08.2010 to 28.10.2010. During the course of treatment, he had to undergo surgeries relating to his hand, chest and other vital organs. He claimed to have sustained 60% permanent disability as a result of the injuries suffered in the accident.

5. The learned Tribunal, after examining the evidence available on record, recorded a finding that the accident had occurred due to the rash and negligent driving of the bus driver. Thereafter, it proceeded to assess the

compensation payable to the claimant.

6. The age of the claimant was determined to be 56 years. He claimed that he was a doctor by profession, possessed a BAMS degree and had been practising for the last 30 years. In support of his income, he also produced his Income Tax Returns for the preceding five years. The learned Tribunal, after taking the average of the annual income disclosed in the aforesaid Income Tax Returns, assessed his average annual income at Rs. 1,38,328/-.

7. However, while considering the effect of permanent disability upon the earning capacity of the claimant, the learned Tribunal observed that the disability relating to one hand, which had occurred due to fracture, was not of much significance, having regard to the nature of the profession in which the claimant was engaged. Accordingly, although the disability certificate issued by the competent doctor indicated 60% permanent disability, the learned Tribunal assessed the functional disability at only 10%. Applying the multiplier of 5, it determined the loss of future earnings at Rs. 69,160/-.Apart from the aforesaid amount, the learned Tribunal awarded Rs. 1,75,739/- towards medical expenses, Rs. 5,000/- towards mental pain and suffering, Rs. 5,000/- towards nutritious diet and Rs. 2,000/- towards transportation expenses. Accordingly, the total compensation of Rs. 2,56,839/- was awarded in favour of the claimant.

8. Learned counsel for the appellant submitted that the learned Tribunal committed an error in reducing the permanent disability sustained by the claimant. It was submitted that the disability certificate was duly proved by examining its author, Dr. A.K. Singh (PW-3). Despite the aforesaid evidence, the learned Tribunal reduced the disability from 60% to 10% without assigning any cogent reason. The reasoning adopted by the learned Tribunal in this regard is neither proper nor sustainable in law.It was further submitted that the learned Tribunal failed to award adequate compensation under the non-pecuniary heads. Even the amounts awarded towards pain and suffering and other incidental expenses are highly inadequate, particularly considering the nature of injuries, prolonged hospitalisation and surgical procedures undergone by the claimant. Accordingly, it was submitted that the compensation awarded by the learned Tribunal requires reassessment and enhancement.

9. Per contra, learned counsel appearing for the respondent-insurance company submitted that the learned Tribunal has rightly assessed the functional disability of the claimant at 10%. The claimant himself admitted that he was a doctor possessing a BAMS degree. The disability certificate indicates that the disability was assessed at 60% on account of a fracture

sustained in one of his hands. Such disability, by itself, cannot be treated as having reduced the earning capacity of the claimant to the same extent, particularly when the nature of his profession does not ordinarily require substantial manual labour. It was, therefore, submitted that the assessment made by the learned Tribunal is justified and does not call for any interference.

10. It was further submitted that the compensation awarded under the non-pecuniary heads is just and adequate and no enhancement is warranted.

11. Heard learned counsel for the parties and perused the findings recorded by the learned Tribunal.

12. The facts relevant to the determination of compensation are not in dispute. Neither party has disputed the injuries sustained by the claimant, his age, his profession or the income assessed by the learned Tribunal. The principal question which arises for consideration is whether the learned Tribunal has committed any error in reducing the extent of disability assessed by the doctor from 60% to 10%.

13. The doctor, in the disability certificate, recorded 60% permanent disability on the basis of fractures sustained by the claimant in his hand. Dr. A.K. Singh, who issued the disability certificate and was examined as PW-3, stated before the learned Tribunal that he had neither treated the claimant nor assessed his disability during the course of treatment. He had recorded 60% disability only on the basis of the X-ray plates produced before him. The aforesaid statement of the doctor indicates that the assessment of disability was not based upon any detailed clinical examination or treatment of the claimant. Therefore, the manner in which the aforesaid disability was assessed by the doctor cannot, by itself, be treated as conclusive for determining the functional disability of the claimant.

14. Moreover, even if the aforesaid assessment is accepted, it represents physical disability and not necessarily functional disability. While determining functional disability, the Court is required to consider not only the disability certificate issued by the doctor but also the nature of the injuries, the opinion of the treating doctor and, most importantly, the nature of the profession or occupation in which the injured person was engaged.

15. In the present case, even if the physical disability recorded in the certificate is taken into consideration along with the profession of the claimant, it cannot be accepted that the same has resulted in 60% functional disability. The claimant himself asserted that he was a BAMS doctor and had been practising for the last 30 years. Ordinarily, the professional

activities of a BAMS doctor, as disclosed in the present case, primarily involve examining patients in the OPD and prescribing medicines. The claimant has not produced any evidence to establish that, apart from examining OPD patients, he was also regularly engaged in performing surgical procedures or other activities requiring extensive manual skills.

16. Even if some BAMS practitioners undertake surgical procedures within the scope of their permitted practice, the same cannot be presumed in the case of the present claimant in the absence of any evidence establishing that such activities formed part of his professional practice. Therefore, merely on the basis of the physical disability recorded in the certificate, it cannot be concluded that the claimant suffered an equivalent loss of functional capacity in his profession.

17. In these circumstances, the assessment of functional disability at 10% by the learned Tribunal cannot be said to be erroneous or unreasonable. Consequently, the compensation awarded towards loss of future earnings, calculated by applying the appropriate multiplier on the basis of the income and other relevant parameters, also does not warrant interference.

18. The only question which remains for consideration is whether any enhancement is required under the non-pecuniary heads. Considering the nature of injuries sustained by the claimant, the prolonged period of hospitalisation, the surgical procedures undergone by him and the permanent physical disability suffered as a result of the accident, this Court is of the view that the compensation awarded by the learned Tribunal under the non-pecuniary heads is inadequate. In the facts and circumstances of the case, an additional lump sum compensation of Rs. 1,00,000/- under the non-pecuniary heads would meet the ends of justice.

19. In view of the foregoing discussion, the compensation awarded by the learned Tribunal, i.e. Rs. 2,56,839/-, is hereby enhanced by an additional sum of Rs. 1,00,000/- towards non-pecuniary damages. Accordingly, the claimant shall be entitled to a total compensation of Rs. 3,56,839/- along with interest at the rate of 6% per annum, as awarded by the learned Tribunal. The remaining findings recorded by the learned Tribunal are hereby affirmed.

20. Accordingly, the appeal is partly allowed to the extent indicated above.

November 3, 2026
Ujjawal

(Anil Kumar-X,J.)

Digitally signed by :-
UJJAWAL
High Court of Judicature at Allahabad