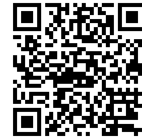
2023:DHC:4978



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

Date of decision:18th July, 2023

\+ MAC.APP. 133/2021

DILIP KUMAR SAH ..... Appellant

Through: Mr.Gaurav Jha, Adv.

versus

PARSHOTAM ALIAS PURSHOTAM LAL (SINCE DECEASED) THROUGH LRS & ANR. ..... Respondents

Through: Mr.Manoj Ranjan Sinha, Mr.Deepak Sain & Ms.Nisha, Advs. for R-2

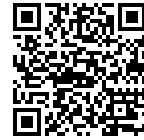
CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed challenging the Award dated 13.01.2021 passed by the learned Motor Accidents Claims Tribunal-02, West, Tis Hazari Courts, Delhi (hereinafter referred to as the 'Tribunal') in MACT case No.174/2017, titled ***Sh.Dilip Kumar Sah v. Sh. Parshotam @ Purshotam Lal & Anr***.

2. The limited challenge of the appellant to the Impugned Award is on two accounts:-

a) That in spite of no written statement being filed either by the owner of the offending vehicle or the Insurance Company alleging any contributory negligence on the appellant, the learned Tribunal has attributed 40% contributory negligence on the appellant, and thereby reduced the compensation awarded to the appellant;

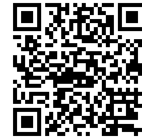


b) In spite of the appellant having been found to have suffered 41% permanent disability in relation to his right lower limb, no amount has been awarded to the appellant for the future prospects.

3. The learned counsel for the appellant submits that the respondents had not attributed any contributory negligence for the accident on the appellant. The learned Tribunal, placing reliance on the cross-examination of the appellant, presumed, without any other evidence being there on record, that the appellant was guilty of the contributory negligence inasmuch as he was crossing the main road on a rickshaw at a spot where there was no zebra crossing or traffic signal. He submits that in absence of any plea of contributory negligence, the learned Tribunal could not have attributed the same on the appellant on basis of presumption.

4. As far as the future prospects are concerned, the learned counsel for the appellant, placing reliance on the judgment of the Supreme Court in ***National Insurance Company Ltd. v. Pranay Sethi &Ors.*** (2017) 16 SCC 680 and ***Pappu Deo Yadav v. Naresh Kumar and Others,*** 2020 SCC OnLine SC 752, submits that as it is a case of permanent disability, the future prospects at the rate of 40% should have been awarded in favour of the appellant by the learned Tribunal.

5. On the other hand, the learned counsel for the respondent no.2 submits that the appellant, in his cross-examination, had given the account of the accident. He had admitted that he was crossing the main road on a rickshaw laden with clothes. He had seen the Offending Vehicle approaching him, however, did not stop. The learned counsel for the respondent no.2 submits that, therefore, the



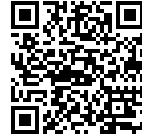
learned Tribunal has rightly attributed 40% of the negligence on the appellant while awarding the compensation.

6. On the Impugned Award not granting the future prospects to the appellant, the learned counsel for the respondent no.2 submits that the appellant in his cross-examination had admitted that he was still doing the work of selling the clothes and was still plying his own rickshaw for the same. He submits that, therefore, there was no loss of future earnings due to the injury suffered by the appellant and the learned Tribunal has rightly not awarded any amount in favour of the appellant on this account.

7. I have considered the submissions made by the learned counsels for the parties.

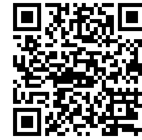
8. It is not denied that neither the owner nor the Insurance Company filed their written statement before the learned Tribunal. Though the learned Tribunal is to conduct an inquiry and not a full fledged trial as a civil suit, the importance of pleadings cannot be undermined. The respondent had, therefore, not attributed any contributory negligence on the appellant in their pleadings. It is only in the course of cross-examination of the appellant, that the appellant was asked to describe the manner in which the accident took place. The specific suggestion to the appellant that he had contributed to the accident was denied by the appellant. The cross-examination of the appellant is reproduced herein below:

> *"I am VIIIth class passed. I am doing business of clothes at weekly market. I am not aware of contents of Ex.PW1/A. I own my own cycle rikshaw for weekly market and I paddle the same of my own.*
> *It is correct that at the time of accident I was riding my rikshaw for weekly market and my*



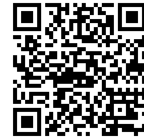
> *rikshaw was loaded with clothes for weekly market shop. The accident took place at main road where I had reached after crossing the service lane/road. It is correct that the accident in question took place in the middle of the road. The accident took place while I was crossing the main road from left side to right side. I had seen the offending vehicle prior to the accident from a distance of about 100 mtrs. The offending vehicle had hit my rikshaw on the right side when the rikshaw was perpendicular to the offending vehicle. There is no traffic signal near the spot. It is wrong to suggest that accident took place due to my negligence as I did not take due care and caution while crossing the road or that I was crossing the road without looking at the traffic or that I reached the main road from service lane without seeing at the running traffic of the main road. It is further wrong to suggest that since my rikshaw was over loaded with clothes, I could not see the traffic on the road or that the accident took place due to my negligence.*
>
> *I can not produce any document in respect of my earning. However, I have already filed certificate reflecting my monthly earning. It is wrong to suggest that Ex.PW1/4 i.e. the certificate in respect of my earning is false and fabricated or that my monthly income is not @Rs.30,000/-.*
>
> *I have filed complete medical bills and documents on record. It is wrong to suggest that I have filed false and fabricated medical documents or that I had not incurred the amount, claimed by me, on my treatment. It is wrong to suggest that I have filed wrong and exaggerated claim or that I am not entitled for any compensation as accident took place due to my negligence."*

9. A reading of the cross-examination of the appellant would show that the appellant stated that he was crossing the main road from left to right on a rickshaw. In my view, the same cannot be considered as a



contributory negligence. The learned Tribunal, however, influenced by the above, in the Impugned Award has attributed 40% of the negligence on the appellant, in spite of finding that the offending vehicle was being driven at a high speed and the driver thereof could not control the vehicle or apply the brake on the correct time. The relevant finding of the learned Tribunal is reproduced as under:

> *"13. In his cross-examination by the insurance company/respondent No.2, petitioner PW1/Dilip Kumar Sah testified that the accident took place while he was plying his rickshaw and crossing main road from left to right. Although, he denied that the accident took place due to his negligence, but, he categorically admitted that the accident took place in the middle of the road. He further testified that offending vehicle had hit his rickshaw from the right side when his rickshaw was perpendicular to the offending vehicle. He also admitted that there was no traffic signal at the spot, meaning thereby there was no zebra crossing or right of way across the road. Even the site plan which was not disputed by petitioner reflects that the accident took place in the middle of road.*
>
> *14. In so far as negligence of driver of offending vehicle is concerned, the same is fortified by the Mechanical Inspection Report of the offending vehicle. The bare perusal of Mechanical Inspection Report of the offending vehicle reflects that it was found with fresh damages viz. Front side dumper and body damaged; right side H/L and fender damaged; grill damaged; bonnet right side portion damaged; AC condenser and radiator bended/ damaged; front side wind screen glass right side portion broken and front side number plate damaged. The manner in which the offending vehicle was damaged, it only proves the fact that it was being driven at a high speed, so much so, that the driver could not control his car and apply brakes at the correct time.*

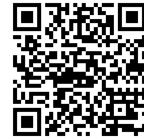


> *15. Considering the above facts and circumstances, I am of the view that the accident in question took place due to negligence of both petitioner as well as respondent No.1/driver (since deceased). It is, accordingly, held that both i.e. petitioner and respondent No.1/driver have contributed to the accident in the ratio of 40:60. Issue No.1 is, thus, decided accordingly."*

10. In my view, in absence of any pleading attributing contributory negligence on the appellant, the learned Tribunal has clearly erred in presuming that the appellant can be saddled with contributory negligence merely on the basis of his cross-examination. Accordingly, the Impugned Award to this extent is set aside.

11. On the issue of future prospects not being awarded to the appellant, again reliance has been placed on the cross-examination of the appellant, which has been reproduced hereinabove. A reading of the cross-examination would show that it was not put to the appellant that there has been no affect in his income or his working capacity due to the accident suffered. The disability certificate shows that the appellant had suffered 41% permanent disability in relation to his right lower limb. The learned Tribunal has considered the appellant to have suffered 20% functional disability to the whole body. There is no challenge to this finding of the learned Tribunal.

12. In ***Pappu Deo Yadav*** (supra), the Supreme Court has granted the loss of future prospects at the rate of 40%. In my view, that is a reasonable measure of loss of future prospects that should be granted in favour of the appellant in the facts of the present case as well. The appellant was in the business of selling clothes in a weekly market, for which, he used to cycle the rickshaw on his own. As the permanent



disability is to his lower limb, the appellant is held entitled to compensation under the head of loss of future prospect at the rate of 40%. Accordingly, the Impugned Award insofar as it does not grant the compensation on account of loss of future prospects to the appellant, is set aside, and is modified granting such compensation.

13. The learned Tribunal is directed to re-determine the compensation payable to the appellant in terms of its Impugned Award, as modified by the present order. The parties shall appear before the learned Tribunal on 20.08.2023.

14. On deposit of the re-determined/enhanced amount, the awarded amount, including the enhancement directed under the present order, along with interest thereon shall be released in favour of the appellant, in accordance with the schedule prescribed by the learned Tribunal.

15. The appeal is allowed to the above extent.

NAVIN CHAWLA, J

JULY 18, 2023/Arya/rp

Click here to check corrigendum, if any