IN THE HIGH COURTOF DELHIAT NEW DELHI

% Judgment delivered on:19.05.2025

\+ **MAC.APP. 448/2024, CM APPL. 49047/2024 & CM APPL. 65412/2024 & CM APPL. 5223/2025**

U P STATE ROAD TRANSPORT CORPORATION .....Appellant

versus

SHIVAM YADAV & ANR. ..... Respondents

Advocates who appeared in this case:

For the Applicant : Mr. Shadab Khan, Adv.

For the Respondent :Mr. Manish Manni and Ms. Aastha Chauhan,Advs. for R-1.

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

MAC.APP. 448/2024, CM APPL. 49047/2024 & CM APPL. 65412/2024 & CM APPL. 5223/2025 & MAC. APP……/2025 *(to be numbered)*

1. The present appeal has been filed challenging the Award dated 22.05.2024 (hereafter '**impugned award**') passed by the learned Presiding Officer, Motor Accident Claims Tribunal, Karkardooma

Courts, Delhi (hereafter '**Tribunal**') in MACT No. 139/ 2017, pursuant to which the appellant was awarded a sum of ₹24,25,000/- along with interest at the rate 7.5% p.a. from the date of filing the Claim Petition till the date of realization.

2. Briefly stated, the facts of the case are that on 08.07.2014, at about 10:00 am, when Respondent No. 1/ claimant was travelling in his car with his relatives namely– Smt. Poonam Yadav, Sh. Niranjan Yadav and Sh. Mukesh Yadav, from Delhi to his native village in Gannaur, UP, a UP Roadways bus bearing registration No. UP-14AT-8536, being driven by Respondent No. 2, came from the wrong side and hit the car of the claimant with great force, as a result of which, the claimant along with other persons travelling with him, sustained injuries.

3. The Claim Petition was filed by Respondent No. 1 under Section 166 of Motor Vehicle Act, 1988 (hereafter 'MV Act'), claiming compensation on account of injuries sustained in the accident.

4. The learned Tribunal while passing the award held that the accident had taken place on account of the rash and negligent driving of Respondent No. 2/ driver of the bus, however since the vehicle was not insured at the time of the accident, the learned Tribunal held the appellant liable to pay compensation to the claimant.

5. The present appeal has been filed seeking to set aside the impugned award on the ground that the accident took place on account of sole negligence on part of Respondent No. 1/ claimant. The appellant further challenges the quantum of compensation granted various heads in the impugned award passed by the learned Tribunal. In CM APPL.-65412/2024, cross-objection is filed by Respondent No. 1/ claimant seeking enhancement of the impugned award.

NEGLIGENCE

6. The learned counsel for the appellant submitted that the learned Tribunal erred in holding that the accident took place on account of rash and negligent driving of Respondent No. 2, whereas the accident took place entirely owing to the negligent driving of the claimant, whose car was coming in high speed and had hit the bus from the driver's side. He submitted that the bus was in a stationary position when the car of the claimant came in the wrong side of the bus.

7. In this regard, he relied on the statement made by Respondent No. 2 / R1W1. He added that there is no contradiction in the examination in chief and cross-examination of Respondent No. 2.

8. He argued that it was a case of head on collision and that in such cases, contributory negligence is attracted. Reliance is placed on the judgement passed by the Hon'ble Apex Court in ***Bijoy Kumar Dugar v. Bidya Dhar Dutta*** **: (2006) 3 SCC 242**.

9. He submitted that the claimant has failed to produce any independent witness or eye-witness in support of his case. He stated that the claimant has the interest to depose falsely, therefore merely his statement should not be relied upon. He placed reliance on the judgement passed by the Hon'ble Apex Court in ***Oriental Insurance Co. Ltd. v. Meena Vriyal*** **: 2007 (5) SCC 428**, to state that the burden to prove negligence was of the claimant, under Section 166 of the MV Act.

10. He further submitted that the FIR was falsely registered, by the father of the claimant, who was not even present at the time of accident.

11. The learned Tribunal held that the accident took place due to the negligence on part of the driver of the bus. The learned Tribunal took note of the fact that the claimant had been cross-examined and no averment contrary to his case was extracted from him. The learned Tribunal rejected the argument of the appellant that the bus was in stationary position when the claimant's car came on the wrong side in a rash and negligent manner, as the Site Plan suggests otherwise and suggests that the bus was not keeping on the left side of the road. No documentary evidence has been placed to state that it was the claimant's car that came from the wrong side. It was noted that his testimony was not in corroboration with the Site Plan which suggests that the bus was not keeping on the left side of the road.

12. The learned Tribunal further noted that FIR was registered against the driver of the bus, however no complaint was filed by him to the authorities for false implication. Further, chargesheet has been filed against the driver of the bus under Section 279/ 338/ 427 of the IPC. The claimant along with eye-witness were cited as witnesses in the chargesheet. The testimony of the eye-witness shows that Respondent No. 2 was driving in a rash and negligent manner. No evidence was lead in this regard to suggest that the claimant was driving on the wrong side of the road at the time of accident.

13. It is further observed that not only the Site Plan but also the Mechanical Inspection Report of the bus and the car, does not indicate any contributory negligence on part of the claimant.

14. This Court is in agreement with the view taken by the learned Tribunal while holding that chargesheet is admissible in evidence in Motor Accident Claims and is deemed to be correct under Rule 7 of the Delhi Motor Accident Tribunal Rules, 2008. It was noted that there is sufficient proof that Respondent No. 2 was driving the bus in a rash and negligent manner.

15. In ***National Insurance Co. Ltd. v. Pushpa Rana*** **: 2007 SCC OnLine Del 1700**, this court observed as under:

> ***"12.*** *The last contention of the appellant insurance company is that the respondents claimants should have proved negligence on the part of the driver and in this regard the counsel has placed reliance on the judgement of the Hon'ble Supreme Court in Oriental Insurance Co. Ltd. v. Meena Variyal; 2007 (5) SCALE 269****. On perusal of the award***

of the Tribunal, it becomes clear that the wife of the deceased had produced (i) certified copy of the criminal record of criminal case in FIR No. 955/2004, pertaining to involvement of the offending vehicle, (ii) criminal record showing completion of investigation of police and issue of charge sheet under Section 279/304-A, IPC against the driver; (iii) certified copy of FIR, wherein criminal case against the driver was lodged; and (iv) recovery memo and mechanical inspection report of offending vehicle and vehicle of the deceased. These documents are sufficient proofs to reach the conclusion that the driver was negligent. Proceedings under Motor Vehicles Act are not akin to proceedings in a civil suit and hence strict rules of evidence are not required to be followed in this regard. Hence, this contention of the counsel for the appellant also falls face down. There is ample evidence on record to prove negligence on the part of the driver.

13. *On the basis of these observations, I feel that there is no infirmity in the impugned award of the learned Tribunal.*

Dismissed."

(emphasis supplied)

16. Undisputedly, the chargesheet in regard to subject the accident has already been filed holding Respondent No. 2 responsible for rash and negligent driving. The same in the absence of any evidence to the contrary is sufficient proof that Respondent No. 2 was driving in a rash and negligent manner.

17. In view of the above, this Court find no infirmity in the view taken by the learned Tribunal that sufficient evidence has been placed in the present case to show that the accident took place due to the rash and negligent driving of the bus by Respondent No. 2, due to which the claimant has sustained grievous injuries. Nothing has been placed by the appellant to show contributory negligence on part of the

claimant. The liability of the appellant is upheld. [Ref: ***National Insurance Co. Ltd. v. Swaran Singh*** **: (2004) 3 SCC 297**]

QUANTUM OF COMPENSATION

Assessment of Disability

18. The learned counsel for the appellant submitted that the Disability Certificate of the claimant is liable to be rejected and that the learned Tribunal erred in assessing the functional disability of the claimant in respect to the whole body as 40%. He submitted that no permanent disability for such injury is defined under Schedule I of the Workmen's compensation Act, 1923, and therefore the Disability Certificate submitted by the claimant is false.

19. As per Section 163-A of the MV Act, compensation can be claimed and awarded strictly in accordance with the structured formula given in the Second Schedule. The Second Schedule entails that the assessment of loss of earning capacity shall be as per the Schedule-I of the Workmen Compensation At, 1923. The Part II of Schedule -I enumerates a list of injuries deemed to result in permanent partial disablement in relation to upper limbs, either arms, wherein loss of hand involves percentage of loss of earning capacity at 60%.

20. The claimant has suffered hemoperitoneum and has sustained close fracture right clavicle with fracture right humerus with bone loss with open fracture, dislocation of right elbow and floating elbow with

RNP. As per the Disability Certificate the claimant suffered 69% permanent disability in relation tohis right upper limb.

21. PW3 Dr. Hemant Sharma, Specialist (Orthopedics) who was a member of the medical board for evaluation of disability of the claimant, was examined on 30.08.2018, who deposed that as per the assessment sheet the right shoulder movement of the claimant is restricted, and right elbow is fixed at 30 degrees. He further stated that the claimant's dominant hand is right, the claimant cannot eat, comb and drink water from his right upper limb, however, he can lift light goods involving both hands, but he cannot lift heavy goods. On being pointedly asked as to what the components of evaluation of the disability of the claimant were, PW3 answered that there is slight restriction in the range of movement in right shoulder of the claimant and for that region disability is assessed to be 8.4% and there is jog of movement at right elbow and for that region the disability is assessed to be 30%. He further stated that there is loss of muscular strength at shoulder and for that reason, the disability is assessed to be 3%, 4% for the reason that dominant limb of the petitioner is right limb and 45% disability is assessed for inability to carryout coordinated activities involving use of right upper limb as mentioned in the column *'Coordinated Activities*' of the assessment-sheet.He further added that the claimant will not be able to perform activities in relation to his right dominant limb and that the disability is permanent and not likely to improve.

22. This Court finds no reason to reject the Disability Certificate issued regarding the disability of the claimant, the same has also been duly proved a member of the medical board for evaluation of disability of the claimant.

23. The learned Tribunal noted the testimony of PW3 and observed that since the claimant was doing the job of supplying and selling readymade garments, he will not be very efficient in lifting articles and using his hand to do even the basic functions required on the daily basis. Moreover, it is observed that the claimant's job will require him to move around, however, since the claimant can also not drive, his mobility is even more hindered. In the opinion of this Court, the assessment of functional disability of the claimant in regard to the whole body as 40% is reasonable.

Compensation towards Pain and Suffering and Loss of Amenities

24. The learned counsel for the appellant argued that ₹2,00,000/- granted as compensation towards pain and suffering and ₹50,000/- granted as compensation towards loss of amenities is excessive. *Per Contra*, the learned counsel for the claimant submitted that the compensation under the heads of pain and suffering and loss of amenities has been granted on a lower side.

25. The claimant was treated at three different Hospitals where various surgical procedures were performed on him. In that regard he has produced necessary witnesses namely– Sh. Aakash Singh, Medical

Record Technician, Max Hospital, Pratapganj, I.P. Extension, Delhi (PW2), Sh. Binod Bihari Das, Administrator Life Care Hospital, Noida, UP (PW4) and Dr. Satyendra Kumar, (BAMS), Varun Hospital, Vishnupuri, Aligarh, UP, to prove his treatment record.

26. The learned Tribunal took note of the multiple surgeries which were performed on the claimant including on his right hand and external fixator was applied there. Surgery of excision of skin grafting of right arm as done. Another procedure was performed, wherein the external fixator which was applied was removed, and nails were inserted in his right proximal humerus (upper portion of the humerus bone connecting to the shoulder joint). Tension Band Wiring was fixed in his right olecranon and other treatment was done. Later bone grafting was done for the fracture of right humerus. The learned Tribunal, while granting compensation of ₹2,00,000/- towards pain and suffering further noted that even after the various procedures undergone by the claimant, he will not be in a position to use his right upper limb effectively on account of the permanent disability.

27. The learned Tribunal further took note that the claimant will not be able to enjoy the basic amenities to the fullest as he cannot lift heavy weights, run properly, cannot wear clothes in a routine manner, cannot drive, which hinders his mobility. PW3, Orthopedics Specialist had also deposed that the claimant will not be able to enjoy the amenities of life and perform daily activities. The learned Tribunal awarded a sum of ₹50,000/- to the claimant towards loss of amenities

while relying on the judgement passed by the Hon'ble Apex Court in Raj Kumar v. Ajay Kumar and Another : (2011) 1 SCC 343, since the future earning capacity has not been assessed at 100%.

28. This Court in ***National Insurance Co. Ltd. v. Pawan Kumar* : 2023 SCC OnLine Del 4964**, wherein a similar injury in respect of the clavicle fracture was sustained by the claimant along with other injuries to the lower limb, upheld the sum of ₹4,00,000/- awarded towards pain and suffering and a sum of ₹1,00,000/- towards loss of amenities.

29. In ***Sanjay v. Suresh Chand* : 2012 SCC OnLine Del 4038**, wherein the claimant suffered serious injuries like fractured pelvis, rupture of urethra and anal canal due to the accident, for which he underwent several successive surgeries, this Court awarded a sum of ₹1,50,000/- towards pain and suffering and ₹1,50,000/- towards loss of amenities.

30. In view of the same, in the opinion of this Court, a sum of ₹1,00,000/- towards loss of amenities is a reasonable assessment. The compensation ₹2,00,000/- towards pain and suffering is reasonable, consolidating to a sum of ₹3,00,000/- under this head.

Loss of Marriage Prospects

31. The counsel for the appellant argued that the compensation of ₹1,50,000/- awarded towards loss of marriage prospects is on the higher side. This Court is not in agreement with this contention of the

appellant. Undisputedly, the age of the claimant at the time of the accident was just 22 years. He is a young unmarried man. The fact that the claimant will not be able to perform even the basic daily activities effectively may affect his marriage prospects.

Conveyance, Special Diet, Attendant Charges and Medical Expenses

32. The learned counsel for the appellant contended that a sum of ₹70,000/- has been granted to the claimant as compensation towards conveyance, special diet and attendant charges without any supporting bills or receipts and despite there being no provision for granting the same in the MV Act.

33. The learned Tribunal while granting compensation towards conveyance, special diet and attendant charges noted that even though no proof regarding the same has been placed by the claimant, considering the surgical procedures the claimant has undergone and having visited different hospitals regularly, he would have incurred conveyance cost. The learned Tribunal awarded a sum of ₹20,000/- towards conveyance and ₹20,000/- towards special diet for recovery post-surgery.

34. Moreover, the learned Tribunal awarded a sum of ₹30,000/- towards attendant charges while holding that it is not necessary for that the person attending to the disabled persons is a professional

person charging a fee. Compensation could also be granted towards the value of services by family members.

35. This Court is in agreement with the view taken by the learned Tribunal in considering the period undergone by the claimant in different Hospitals for his treatment and drawing an inference regarding the number of times he would have to visit the Hospital, to award compensation towards conveyance. However, considering the same, along with the fact that the claimant has lost his capacity to drive, the compensation towards conveyance is enhanced to ₹50,000/-.

36. As noted above, the claimant has undergone multiple surgeries and would suffer all his life owing to the injuries sustained by him. He would require considerable assistance of an attendant to do basic chores and other coordinated activities. Keeping in mind the nature of injuries sustained by him and the period of hospitalization including the surgeries, the procedure undergone upon him and also the follow-up treatments that may be required, the compensation towards attendant charges is enhanced to ₹1,00,000/-.

37. The compensation awarded by the learned Tribunal towards special diet is upheld.

38. The contention of the appellant that the compensation of ₹6,17,221/- for medical expenses is on the higher side, is devoid of any merit. The learned Tribunal has relied on all the medical bills and receipts placed on record by the claimant which amount to a sum of

₹6,17,221/-. All the bills and receipts were found to be in order and infact, no challenge was made in regard to the same before the learned Tribunal. The amount awarded towards medical expenses is upheld.

Interest

39. Lastly, the learned counsel for the appellant contends that the present interest rate of interest given by the nationalized banks for fixed deposit of one year is no more than 6% as also applicable as per the statutory provision under section 34 of the Code of Civil Procedure, 1908 ('CPC') and therefore, the learned Tribunal erred in awarding interest at the rate of 7.5%.

40. It is pertinent to note that this Court in the case of ***United India Insurance Company Ltd v. Smt. Mithlesh Kumari and Ors*** **:MAC. APP. 161/2025** had noted that the award of interest was a matter of judicial discretion, and that the same found its genesis in the forbearance of the claimants who are kept out of the money that they were entitled to at the time of filing of the claim petition. It was consequently noted that the award of @9% interest is a reasonable assessment. Similarly, in the present case as well, the rate of interest is increased to 9%.

Conclusion

41. The compensation amount awarded by the learned Tribunal is enhanced in the aforesaid terms. The matter is remanded back to the learned Tribunal for the limited purpose of re-determining the

compensation of the claimant under various heads in the following manner– (i) enhance the compensation towards loss of amenities to a sum of ₹1,00,000/- (ii) enhance the compensation towards conveyance to ₹50,000/- (iii) enhance the compensation towards attendant charges to ₹1,00,000/- (iv) the rate of interest be increased to 9%.

42. The finding of the learned Tribunal on all other issues, including multiplier, functional disability, future prospects, medical expenses, computation of income, special diet, attendant charges and loss during treatment, loss of future income and marriage prospects are affirmed and shall remain undisturbed.

43. The learned Tribunal shall undertake the re-computation expeditiously, preferably within a period of four weeks from the date of the first listing of the Claim Petition before the learned Tribunal on remand. The parties shall appear before the learned Tribunal on 03.06.2025.

44. The compensation amount so determined, on remand, shall be disbursed in favour of the appellant as per the manner provided in the impugned award.

45. Accordingly, MAC.APP. 448/2024 is dismissed.

46. The cross-objections filed in CM APPL.-65412/2024 are allowed and the same is numbered as **MAC.APP. (*to be numbered*) /2025.**

47. In view of the above, MAC.APP (*to be numbered*) /2025 filed by the claimant is partly allowed and disposed of in the aforesaid terms.

48. The statutory amount deposited by the appellant be returned to the appellant along with interest accrued thereon.

49. Pending applications, if any, also stand disposed of.

AMIT MAHAJAN, J

MAY 19,2025