



2025:DHC:145



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

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Reserved on: 25th October, 2024

Pronounced on: 13th January, 2025

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MAC.APP. 52/2022

RINKU @ GAJENDRA

S/o Sh. Vikram Singh Dagar

R/o Alawalpur,

Palwal-121102.

.....Appellant

Through: Mr. Varun Sarin & Ms. Parul Dutta,
Advocates.

versus

1. **SHYAMBIR PATHAK**

S/o Sh. Daya Chand

R/o Vill. Lalpura, Teh. Palwal,

Dist. Faridaba-121102

.....Respondent No. 1

2. **NARESH KUMAR**

S/o Sh. Khillu Ram

R/o Vill. Lalpura, Teh. Palwal,

Dist. Faridabad-121102

(Haryana)

....Respondent No. 2

3. **HDFC ERGO GEN. INS.**

CO. LTD.

Ground Floor, Eros Corporate Tower,

Opp. Nehru Place Metro Station,

Nehru Place, New Delhi-110019.

.....Respondent No. 3

Through: Ms. Niyati, Advocate for Insurance
Company through VC.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.



1. An Appeal under Section 173 of the Motor Vehicle Act, 1988 has been filed against the Impugned Award dated 12.06.2020 by the Appellant/Injured seeking enhancement of compensation in the sum of Rs. 3,41,664/- along with interest @ 9% per annum, awarded on account of injuries suffered by him in the road accident on 11.02.2018.

2. The enhancement of the compensation is sought on the following **grounds**:

(i) 50% deduction has been made towards contributory negligence of the Claimant by observing that it was a head on collision, without considering that he was merely a pillion rider;

(ii) The *Income* of the injured has been incorrectly calculated on the basis of Minimum Wages for unskilled worker in Haryana without considering that the Appellant was working as a Salesman earning a salary of Rs. 25000/- p.m.;

(iii) The *Loss of Earnings during treatment* has been granted only for 5 months without considering the nature of the injuries;

(iv) The injured was assessed with 40% permanent disability in respect of right foot the *functional disability* is erroneously taken as 20%, without considering the limitations in his mobility;

(v) The *future prospects* have not been granted in light of the judgment of the National Insurance Co. Ltd. v. Pranay



Sethi, (2017) 16 SCC 680;

(vi) The compensation towards *Medical Expenses* needs to be enhanced in accordance with the Bills on record; and

(vii) The amount granted for *special diet and conveyance charges* and *attendant charges* is on the lesser side; and

(viii) The other amounts, under the Non-Pecuniary Heads such as pain and suffering and the loss of life and amenities, are liable to be enhanced.

3. ***Learned counsel on behalf of the Respondent No. 3/ Insurance Company*** has argued that the Impugned Award dated 12.06.2020 is well reasoned and the Appeal is liable to be dismissed.

4. **Submissions heard and record perused.**

5. *Briefly stated*, on 11.02.2018, at about 7:30 p.m., while Mr. Bhupender Singh, cousin of the injured Appellant was driving his *motorcycle bearing No. HR-30E-0261* with injured/Appellant as the pillion rider, they were hit by the offending vehicle bearing No. HR-30N-8567, coming from the opposite side which was being driven rashly and negligently by the *Respondent No.1/ Shayambir Pathak*. Due to the impact, the injured/Appellant fell and sustained grievous injuries all over his body and crush injury of his right foot.

6. The Appellant was taken to Metro Heart Institute, Faridabad for medical treatment and subsequently was shifted to Jail Prakash Narayan Apex Trauma Centre (AIIMS) and St. Stephen's Hospital, Tis Hazari where



his MLC no. 69/2018 prepared.

7. FIR No.0051/2018 u/s 279/338/337 IPC 1806 was registered with P.S. Chand Hut Distt. Palwal against the Driver/ Shyambir Pathak. The Charge-sheet was filed under Section 279/337/338 IPC 1860 after completion of the Investigations.

8. The Claim Petition was filed by the Appellant; vide the Impugned Award dated 12.06.2020, the Ld. Tribunal awarded a total compensation in the sum of Rs. 3,41,664/- along with an interest @ 9% p.a.

Contributory Negligence of Pillion Rider:

9. The first ground of challenge is that merely because it was a case of head-on-collision, 50% contributory negligence has been attributed to deduct the compensation amount despite that he was travelling as a pillion rider on the Motorcycle which was being driven by his cousin Sh. Bhupender Singh.

10. In the case of Mohammed Siddique & Anr. vs. National Insurance Company Ltd. & Ors., AIR 2020 SC 520 the Supreme Court addressed the issue of contributory negligence concerning a pillion rider involved in a motor vehicle accident. The Court held that being a pillion rider, even if accompanied by more than the legally permitted number of passengers, does not automatically imply contributory negligence. For such a finding, it must be demonstrated that the pillion rider's actions directly contributed to the occurrence of the accident or exacerbated its impact. The Court emphasized that a violation of traffic laws, such as exceeding the permissible number of riders on a motorcycle, does not by itself establish contributory negligence.



There must be a clear causal connection between the violation and the accident. Without such evidence, attributing contributory negligence to the pillion rider, is unjustified.

11. Thus, in the present case, even if it is a head on collision, there was nothing on record to show that any action of the Injured-pillion rider, which led to accident or that the conduct of pillion rider had a direct causal link to the accident or its consequences, when he was admittedly not even driving the motor vehicle. ***Thus, the Ld. Tribunal has erred in deducting 50% of the Compensation amount.***

Compensation for Medical Expenses: -

12. The Appellant has challenged the amount of Rs. Rs. 1,10,248/- granted towards Medical Expenses/Expenditure on Medical Treatment in terms of the Medical Bills *Ex. PW-1/G(colly)*.

13. Though the Appellant had averred in the Claim Petition that he has incurred an expense of more than Rs. 2,00,000/- towards Medical Treatment however, he himself has voluntarily stated in his cross examination dated 05.04.2019 that *“I have placed on record all the bills available with me. (vol. They do not amount to Rs. 2 lacs as stated in para no.8 of my affidavit).”*

14. In absence of any other evidence to prove additional expenses incurred during the period of treatment, ***the Ld. Tribunal has rightly granted Rs. 1,10,248/- towards compensation for medical expenses considering the Medical Bills placed on record by the Appellant.***

Loss of Earnings/Income:



(i) Assessment of Income: -

15. PW1- Sh. Rinku @ Gajendra/Injured in his affidavit of evidence Ex. PW1/1 has deposed that he was working in Dalchand Group (Wine Contractor) at Alawalpur Circle, Palwal, Haryana as Sales Executive, on a monthly salary of Rs. 25,000/- at the time of accident.

16. Since there is no document filed on record to prove the income or educational qualification or source of income, nor had any witness examined to support the deposition of the Appellant about his monthly income, *the Ld. Tribunal has rightly applied the Minimum Wages of an unskilled worker in Haryana i.e. Rs.7,600/- p.m., to calculate the income of the Appellant.*

(ii) Period of Medical Treatment: -

17. As per the record, after the accident, the injured/Appellant was taken to Metro Hospital on 11.02.2018 as he had sustained severe injuries resulting in crushing of right foot with bones and tendons exposed. Subsequently, he was shifted to JPN Apex Trauma Centre (AIIMS) and then St. Stephen's Hospital, Tis Hazari.

18. The Discharge Summary (Mark A) of St. Stephen's Hospital, Tis Hazari, reflects that he was admitted on 11.02.2018 and was discharged on request on 23.02.2018. Further, the Medical Record/OPD cards and Progress notes of Department of Emergency Medicine - JPN Apex Trauma Centre (AIIMS) reflects that the follow up treatment continued till 02.11.2018.

19. Thus, the Injured is entitled to a compensation for the treatment period from 11.02.2018 till November, 2018 i.e. 8 months and the **Total Loss of Earnings** is re-calculated as under: -



Rs. 7,600/- X 8 months = Rs. 60,800/-

Loss of Future Earnings due to Disability: -

(i) Functional Disability: -

20. As per the *Report of Medical Examination* by Pt. Madan Mohan Malaviya Hospital, the Injured/ Appellant has suffered *Permanent Disability to the extent of 40% in relation to crush injury right foot.*

21. Considering that there is no proof to establish the employment of the Appellant or his nature of work, ***the Learned Tribunal has rightly assessed the functional disability as 20% and the same warrants no interference.***

(ii) Future Prospects: -

22. It has also been asserted that the Learned Tribunal has erred in calculating the Loss of future earning capacity without adding any amount for future prospects.

23. In light of the judgment of *National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680, the injured would be entitled to an ***addition of 40%*** of the established income as he was below the age of 40 years.

24. Thus, the **Total Loss of Future Earning due to Disability** is re-calculated as under: -

Rs. 7600/- X 140/100 X 20/100 X 17 X 12= Rs. 4,34,112/-

Special Diet, Conveyance Charges and Attendant Charges: -

25. In view of the nature of injury and probable period of treatment the Learned Tribunal has rightly granted a lumpsum amount of Rs. 25,000/- each, towards *Special Diet and Conveyance charges*. Further, despite the



absence of any documentary evidence, Id. Tribunal has also awarded Rs. 25,000/- towards *Cost of Nursing and Attendant Charges* to compensate for the gratuitous services rendered by family member.

26. Though it has been claimed that this compensation amount does not cover cost of future conveyance charges and attendant charges, but considering that nature and the extent of the injury it is not a case where the injured would require lifetime attendant, especially when no evidence has been produced in this regard.

27. ***Thus, the amounts awarded do not warrant any modification.***

Non- Pecuniary Heads: -

28. The Learned Tribunal has rightly granted a sum of Rs. 25,000/- towards Mental and Physical Shock; Rs. 25,000/- for Pain and Suffering; Rs. 50,000/- towards Loss of amenities of life and Rs. 50,000/- towards disfiguration and ***the same does not warrant any modification.***

Relief: -

29. Thus, the total amount of compensation is re-calculated as under:

S. No.	Heads	Amount granted by the Ld. Tribunal	Amount Modified by this Court
1.	Total Loss of Income	Rs. 38,000/-	Rs. 60,800/-
2.	Expenditure on Treatment	Rs. 1,10,248/-	Rs. 1,10,248/-
3.	Loss of Future Earning Capacity	Rs. 3,10,080/-	Rs. 4,34,112/-
4.	Special Diet and Conveyance Charges	Rs. 50,000/-	Rs. 50,000/-
5.	Pain and Suffering	Rs. 25,000/-	Rs. 25,000/-



6.	Loss of Amenities of life	Rs. 50,000/-	Rs. 50,000/-
7.	Disfigurement	Rs. 50,000/-	Rs. 50,000/-
8.	Mental and Physical Shock	Rs. 25,000/-	Rs. 25,000/-
9.	Attendant Charges	Rs. 25,000/-	Rs. 25,000/-
10.	Deduction towards Contributory Negligence	50%	NIL
	TOTAL COMPENSATION	Rs. 3,41,664/-	Rs. 8,30,160/- Rounded off to Rs. 8,31,000/-

30. Thus, the total compensation granted to the Claimant is enhanced to **Rs. 8,31,000/-** along with interest @9% per annum from the date of the Claim till the disbursal of the amount, in terms of the Impugned Award dated 12.06.2020.

31. The Appeal stands disposed of along with the pending Application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 13, 2025