



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

% **Judgment reserved on : 05 April 2024**
Judgment pronounced on : 14 May 2024

+ MAC.APP. 964/2016

SALIYA BEGUM @ SARLA Appellant
Through: Ms. Aruna Mehta, Adv.

versus

DHIYAN SINGH & ORS (THE NEW INDIA ASSURANCE
CO LTD) Respondents

Through: Ms. Raveesha Gupta, Mr.
Ravinder Singh & Mr.
Abhishek Kathuria, Advs.

+ MAC.APP. 411/2017

NEW INDIA ASSURANCE CO LTD Appellant

Through: Ms. Raveesha Gupta, Mr.
Ravinder Singh & Mr.
Abhishek Kathuria, Advs.

versus

SALIYA BEGUM @ SARLA & ORS Respondents

Through: Ms. Aruna Mehta, Adv. for R1.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This common judgment shall decide the above noted cross-appeals preferred by the parties. The appellant Saliya Begum @ Sarla



(hereinafter referred as the claimant) has preferred the appeal bearing no. MAC APP 964/2016 in terms of Section 173¹ of the Motor Vehicles Act, 1988² for enhancement of compensation against the impugned judgment-cum-award dated 02.06.2016, passed by the learned Presiding Officer, Motor Accident Claims Tribunal-02, West District, Tis Hazari Court, Delhi³ in Suit No. 899/2014, titled 'Saliya Begum v. Sh. Dhiyan Singh & Ors', whereby the learned Tribunal awarded compensation to the sum of Rs. 7,43,377/- to the claimant along with interest @ 9% per annum from the date of filing of the Detailed Accident Report⁴ till realisation. The appellant/insurance company too has preferred the appeal bearing no. MAC APP. 411/2017 on various grounds that would be alluded to later on in this common judgment.

FACTUAL BACKGROUND:

2. Shorn of unnecessary details, a motor accident took place on 10.03.2014 at about 07:50 a.m. near the flyover in front of Vishal Mega Mart, Nangloi, Delhi, when the claimant was crossing the road and was hit by a Haryana Roadways Bus No. HR-61-A-5438⁵, as a result of which she suffered grievous injuries. The offending vehicle was allegedly being driven in a rash and negligent manner by its driver Dhiyan Singh, while General Manager Haryana Roadways was the owner of the offending vehicle, which was admittedly insured with

¹ (1) Subject to the provisions of sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court.

² MV Act

³ Tribunal

⁴ DAR

⁵ Offending vehicle



New India Assurance Company Limited i.e. the appellant/insurance company in MAC. APP 411/2017.

3. From the pleadings of the parties, contentions raised and material on record, the following issues were framed by the learned Tribunal vide order dated 23.09.2014:

- “1. Whether the petitioner Ms. Saliya Begum @ Saria suffered injuries in an accident that took place on 10.03.2014 at about 07.50 am involving Haryana Roadways Bus bearing No. HR-61-A-5438 driven by respondent No. 1, owned by respondent No. 2 and insured with respondent 3 Insurance Company? OPP
2. Whether the petitioner is entitled for compensation? If yes, what would be the amount and who would be liable to pay?
3. Relief”

4. At the outset, there is no challenge to the findings recorded by the learned Tribunal on issue No. 1 holding that the vehicular accident was caused due to the wrongful act and negligence of the driver of the offending bus resulting in bodily injuries to the claimant.

5. As regards the quantum of compensation, learned Tribunal relied on the judgement of **Raj Kumar v. Ajay Kumar**⁶ and assessed compensation under various pecuniary and non-pecuniary heads as under:

S.No.	Compensation head	Amount Awarded
1.	Expenses of treatment and medical bills	Rs. 92,968/-
2.	Expenses on Conveyance	Rs. 12,000/-
3.	Expenses on Special Diet	Rs. 25,000/-
4.	Attendant's Charges	Rs. 14,000/-
5.	Loss of earning during the period of treatment	Rs. 71,344/-
6.	Loss of future earning on account of permanent disability	Rs. 4,28,064/-
7.	Pain and suffering	Rs. 50,000/-

⁶ (2011) 1 SCC 343



8.	Loss of amenities	Rs. 50,000/-
	Total Compensation	Rs.7,43,377/-

6. Thus, the claimant was awarded a total compensation of Rs. 7,43,377/- as compensation along with interest @ 9% per annum from the date of filing of the DAR i.e. 21.04.2014. Needless to state, that since the offending vehicle was duly insured to cover third party risks, the appellant/insurance company was held to be under statutory liability to pay the compensation.

GROUND OF APPEAL & LEGAL SUBMISSIONS:

7. Learned counsel for the claimant sought enhancement of compensation under the pecuniary as well non-pecuniary heads, submitting that the learned Tribunal failed to consider the potential future income growth and reduced the assessed permanent disability from 44% to 25% which impacts the evaluation of loss of earning capacity or functional disability. It is further urged that despite categorical testimony of PW-1 Ms. Mohsina Parveen, who deposed that she was working as an attendant to look after the claimant from the date of accident for about seven months at a monthly salary of Rs. 7500/- per month, was discarded without any reasons and the attendant charges have wrongly been assumed abysmally low at Rs. 2,000/- per month. It was further urged that the compensation towards non-pecuniary heads has been assessed at extremely low scales and the same should be enhanced under each head.

8. *Per contra*, learned counsel for the appellant/insurance company urged that the claimant deposed that she was a homemaker but she did not produce any proof of her educational qualification and



the assessment of notional income based on minimum wages applicable to a non-matriculate was erroneous on the part of the learned Tribunal. It was further urged that the loss of earning capacity or functional disability has rightly been assessed at 25% except that the learned Tribunal chose to award certain gratuitous amount in the nature of loss of earnings for the period of medical treatment while the claimant was hospitalized only for five days as per the discharge summary from Cignus Sonia Hospital⁷.It was also urged that the learned Tribunal has awarded compensation on a higher side, which needs to be reduced under each head.

ANALYSIS & DECISION:

9. Having bestowed my anxious consideration to the submissions advanced by the learned counsel for the contesting parties and on perusal of the record, at the outset, this Court finds that the appeal filed by the insurance company is bereft of any merits. On the other hand, this Court finds considerable merit in the plea espoused by the learned counsel for the claimant for enhancement of compensation.

10. First things first, as regards loss of earning capacity or functional disability on account of permanent disability, PW-4 deposed about the permanent disability certificate vide Ex.PW-2/3 substantiating that the claimant has suffered permanent disability to the extent of 44% in relation to her right lower limb and left upper limb. The claimant was 34 years of age at the time of accident and the permanent locomotor disability is such which would reduce her ability to stand, walk, run, climb stairs as well as squat. As per the disability

⁷ At page 85 of the PDF of digitized record



certificate, the locomotor impairment is such which is unlikely to improve. There is no gainsaying in the fact that the claimant, as a homemaker, was catering to various household chores and it is in her evidence that she also used to take her children to and from school, and such task would now be performed by her with extreme difficulty and pain.

11. Although, learned Tribunal has not erred in reckoning minimum wages provided for a non-matriculate @ Rs. 8918/- per month during the relevant time, however, evidently the learned Tribunal has not provided for an increase in future prospects @ 40%. The functional disability should also be enhanced to at least 32% considering the nature of injuries suffered by the claimant. Therefore, the amount of compensation on account of loss of earning/functional disability is assessed as “Rs. 8,918 + 40% of 8,918 = Rs. 12,485.2 p.m. X 12 months” and the annual notional income would come to Rs. 1,49,822.4/-. Further, the functional disability is assessed at 32% thus, the total compensation, on applying a multiplier of ‘16’ would come to Rs. 7,67,091/-.

12. As regards the attendant charges, although PW-1 did acknowledge that before the accident, she was working as a maid servant for Rs. 1,000/- per month, but her testimony is trustworthy to the effect that after the accident she was paid more to look after the claimant, and therefore, the assumption of her monthly salary as maid servant plus attendant @ Rs. 3,000/- per month from the date of accident for a period of seven months shall be just and reasonable. Hence, it shall be Rs. 3000 x 7= Rs. 21,000/-.



13. No interference is required with the compensation towards reimbursement of expenses towards medical treatment and medicines arrived at Rs. 92,968/-. However, conveyance charges are increased to Rs. 25,000/-. The loss of income or earning during the period of treatment which was a notional figure @ Rs. 71,344/- is just and reasonable (8,918 x 8).

14. Further, having regard to the nature of injuries, prolonged treatment as also the permanent disability suffered by the claimant in her middle age, the amount of compensation towards pain and suffering and loss of amenities is increased to Rs. 1.5 Lacs each.

15. In view of the above, the total compensation is re-worked as under:-

S. No.	Heads of compensation	Amount
1.	Loss of earning during the period of treatment	Rs. 71,344/- (Rs. 8,918 x 12)
2.	Loss of future earnings on account of functional disability	Rs. 7,67,091/- [(Rs.8,918 + 40% of 8918) x 12 x 32% x 16)
3.	Expenditure on medical bills, medicines etc.	Rs. 92,968/-
4.	Expenditure on Conveyance	Rs. 25,000/-
5.	Expenditure on special diet	Rs. 25,000/-
6.	Attendant's charges	Rs. 21,000/-
7.	Pain and suffering	Rs. 1,50,000/-
8.	Loss of amenities of life	Rs. 1,50,000/-
	Total Compensation	Rs. 13,02,403/-

16. Lastly, no interference is required in grant of interest by the learned Tribunal @ 9% per annum for the reason that after filing of the DAR, the appellant/insurance company had offered a ridiculous



amount of compensation of Rs. 75,000/-, which was rightly refused by the claimant. Therefore, decision by the learned Tribunal to award interest @ 9% from the date of filing of DAR i.e. 21.04.2014 till its realization shall stand.

17. The appellant/Insurance Company is directed to deposit the entire amount of compensation with the learned Tribunal, if not already deposited, as enhanced by this Court within four weeks from today with accrued interest, failing which, the appellant/insurance company shall be liable to pay penal interest @ 12% per annum from the date of this judgment till realization.

18. Accordingly, the appeal filed by the appellant insurance is dismissed. The statutory amount of Rs. 25,000/- deposited by the appellant insurance company shall be forfeited to the state.

19. The appeal filed by the claimant is allowed in terms of the aforesaid decision.

DHARMESH SHARMA, J.

MAY 14, 2024

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