

\$~10

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

% *Date of Decision : 14th August, 2015*

+ **MAC.APP. 937/2011 & CM No.19489/2011**

PWI NORTHERN RAILWAY Appellant

Through: Mr.Jagjit Singh , Senior Standing
Counsel with Mr.Shivanshu Bajpai,
Advocate.

versus

JAI KARAN @ NAND LAL & ORS Respondents

Through: Ms.Nidhi Tyagi, Advocate proxy
counsel.

PRATIBHA RANI, J. (Oral)

1. The appellant before this Court is Permanent Way Inspector, Northern Railway who has challenged the award dated 23.07.2011 passed by the Tribunal in Claim Petition No.438/2010 whereby compensation of ₹2,31,334/- alongwith interest @ 7.5% p.a. from the date of filing the petition till its realisation, was awarded to the injured/respondent No.1 namely Jai Karan @ Nand Lal. Respondent No.2 namely Devi Deen is the driver of the offending vehicle i.e. truck No.HYO 4383 owned by the appellant.

2. Following two contentions have been raised by Sh.Jagjit Singh, Advocate for the appellant:-

(i) There is discrepancy in the name and parentage of the injured and even in the MLC prepared at Aruna Asaf Ali Hospital shows the name of the patient as Nand Lal but the election identity card produced by the injured shows his name as Jai Karan Bind. Thus, there is no evidence to prove that

Jai Karan Bind and Nand Lal are one and the same person or that the treatment record pertains to the claimant Jai Karan Bind @ Nand Lal.

(ii) The disability certificate proved the disability of 15% in respect of the lower limb but the learned Tribunal has considered the said disability to be 15% in respect of the whole body. It is a case of amputation of great toe of right foot. Thus, the award of compensation of ₹1,05,000/- on account of pain and suffering, loss of amenities of life and discomfort or inconvenience is also on higher side.

3. I have heard learned counsel for the appellant and carefully gone through the record.

Contention No.1

4. In this case FIR No.140/2010 under Sections 279/338 IPC was registered at PS Lahori Gate on 29.09.2010. The case was registered on the basis of statement made by Sh.Upender Bind, S/o Sh.Jai Karan @ Nand Lal Bind, resident of Village Sarsanda, PS & Tehsil Lakhi Sarai, Bihar but at that time residing at Jhuggi, Mithai Pul, DRP Lines Gate, Lahori Gate. In the said statement, the complainant stated before the police that on the date of occurrence at about 9.45 pm, he alongwith his father was present in front of gate of DRP Lines, Lahori Gate, Mithai Pul when his father entered DRP Lines near the wall on the right side for urinating. While his father was returning, the driver of truck No.HYO 4383 came there driving the said truck in a negligent manner and the said truck overrun the right foot of his father and entered DRP Lines. He chased that truck and overpowered the driver and brought him to the gate of DRP Lines. His father was taken to Aruna Asaf Ali Hospital by PCR Van. The driver of the said truck was identified as Devi Deen, S/o Janki, R/o H.No.113, Chanderlok Colony, Jind, Haryana, who was produced by the complainant before the Investigating

Officer. The MLC (at page 489) prepared on 28.09.2010 at 10.30 pm at Aruna Asaf Ali Hospital shows the name of the injured as Nand Lal, resident of Village Sarsanda, Bihar with alleged history of RTA near Mithai Pul, Lahori Gate and patient was brought by HC Ghamman Lal of PCR-955 with crush injuries on right foot. The treatment record produced by the claimant for purpose of seeking compensation was not only of Aruna Asaf Ali Hospital but also of St.Stephen Hospital where he remained under treatment for a long time. **The MLC prepared at Aruna Asaf Ali Hospital records mark of identification as tattoo 'Nand Lal' and thumb impression of the injured have also been obtained on the said MLC.** Thus, the identity of the injured was never in dispute. It is not the case of the appellant that the claimant in this case was not having amputation of great toe of right foot or the disability certificate Ex.PW1/7 does not pertain to him. It may be noted here that the disability certificate also contains the photograph of the claimant/injured.

5. The thumb impression of the injured not only appeared on the MLC but also on the disability certificate and in case of any suspicion on the issue of identity, the appellant, which is a government body i.e. Northern Railway, could have got compared the thumb impression of the claimant on the MLC with the thumb impression on the petition as well as affidavit filed by way of evidence.

6. It is an unfortunate case where a giant government body is litigating with jhuggi dweller for a meagre compensation of ₹2,31,334/- awarded in a case of permanent disability taking such frivolous pleas like disputing the identity of the claimant without any basis. It is relevant to note here that no other person in respect of accident pertaining to which FIR No.140/2010 under Sections 279/338 IPC registered at P.S. Lahori Gate, had

approached the Court to claim compensation. There is absolutely no material to establish that the treatment record of two hospitals i.e. Aruna Asaf Ali Hospital and St.Stephens Hospital do not pertain to the claimant who had obtained Disability Certificate from another government hospital i.e. Hindu Rao Hospital. Contesting the award of compensation on such frivolous pleas shows that Northern Railway is more inclined to spend money on litigation instead of honouring its onerous duty and vicarious liability to pay compensation to the victim who suffered permanent disability due to rash and negligent driving of its employee/driver i.e. respondent No.2. This contention is without any basis and the same is rejected.

Contention No.2

7. Learned counsel for the appellant has drawn the attention of this Court to the disability certificate contending that the disability of 15% is in relation to lower limb and not in respect of the whole body. The Tribunal while awarding compensation has taken into consideration the disability and awarded the compensation as under:-

(i)	Medical Expenses	-	₹51,500/-
(ii)	Special diet & conveyance	-	₹9,000/-
(iii)	Loss of income (for three months)	-	₹15,834/-
(iv)	Loss of future income	-	₹50,000/-
(v)	Pain & suffering, loss of amenities Of life and discomfort or inconvenience	-	₹1,05,000/- (i.e. ₹35,000/- for each head)

8. Section 166 of the Motor Vehicles Act, 1988(the Act) enjoins payment of just compensation. In General Manager, Kerala Road Transport Corporation, Trivandrum v. Susamma Thomas & Ors., (1994) 2 SCC 176, the Supreme Court held as under: -

“5.....The determination of the quantum must answer what contemporary society "would deem to be a fair sum such as would allow the wrongdoer to hold up his head among his neighbours and say with their approval that he has done the fair thing". The amount awarded must not be niggardly since the law values life and limb in a free society in generous scales'. All this means that the sum awarded must be fair and reasonable by accepted legal standards.”

9. In Arvind Kumar Mishra v. New India Assurance Company Limited, (2010) 10 SCC 254, the Supreme Court dealt with the case of disability of an engineering student. The Supreme Court observed that while awarding compensation in personal injury cases, an attempt should be made to put the injured in the same position as he was as far as money is concerned.

10. While considering the permanent disability, **the Tribunal has noted the disability of the claimant/injured to the extent of 15% with regard to the right lower limb**, the Tribunal has held as under:-

Loss of future income:

Petitioner has suffered 15% permanent disability in regard to right lower limb due to amputation of great toe of right foot. Petitioner has stated that he was working as a labour at Paharganj, Delhi. In view of the fact that petitioner is not shown to be skilled, amputation of great toe of his right foot, would to some extent affect the working of the petitioner. Age of petitioner as per Voter I-Card was 32 years on 01.09.94 but as per petitioner he was 55 years of age. Accordingly, age as claimed by petitioner as 55 years is taken as the age of the petitioner. Accordingly, a lump sum amount of ₹50,000/- is allowed under this head.'

11. I am unable to understand as to how such a plea can be raised before this Court that 15% disability has been taken in respect of the whole body when no such finding has been given by the Tribunal. Rather a lumpsum compensation of Rs.50,000/- has been allowed on this count. This is a case

of permanent disability where after amputation of great toe of right foot, the injured not only suffered social stigma but must be facing difficulties in carrying on his day to day activities. With great toe of right foot being amputated, he may not be even able to wear chappal, slippers or other footwear which otherwise he might be wearing in ordinary course. The learned Tribunal has not taken 15% permanent disability in respect of the whole body, hence this contention is also liable to be rejected.

12. Another aspect which needs to be highlighted in this case is that the statutory amount of Rs.25,000/- required to be deposited by the appellant at the time of filing the appeal, was deposited by the appellant vide cheque No.518012 dated 14.10.2011 drawn on State Bank of India, Chandni Chowk Branch, Delhi. The office note by the Registry on the appeal file is to the following effect :

'At the time of filing of this case a cheque for statutory amount was deposited with this case by Counsel for the appellant. The said cheque (No.518012 dated 14.-10-11 for the amount of ₹25,000/-, drawn on State Bank of India, Chandni Chowk, Delhi in favour of the Registrar General of this Court) alongwith the case was sent to Cash Branch on 30.01.2012. whereon the said cheque was removed for depositing in CCD Account by the dealing of Cash Branch on 31-01-2012. Thereafter the said cheque was returned to the branch vide noting of Cash Branch dated 01.02.2012 stating therein that 'the said cheque has become time barred'. On receiving back of the said cheque the counsel for appellant (Mr.Jagjit Singh) has been intimated through telephone and requested so many times to collect this out-dated/time barred cheque and submit a fresh cheque in lieu of the same but the said out-dated cheque has not been collected by the counsel for the appellant so far.'

13. The above conduct of the appellant shows that the appellant has scant regard even for their statutory duties and instead of complying with the requirement of depositing the statutory amount in real terms, it was done

only on papers.

14. In view of above discussion and considering the frivolous grounds taken in the appeal, I find that this appeal needs to be dismissed not only with cost but also special cost needs to be imposed on the appellant.

15. The appeal is hereby dismissed with cost. Special cost of ₹50,000/- is imposed on the appellant which shall be payable to the respondent No.1/injured.

16. The appellant is directed to deposit the cost and special cost within four weeks from the date of this order, failing which, it shall be deposited with interest @ 9% p.a. from the date of filing this petition.

17. Perusal of the record reveals that 50% of the award amount has already been released in favour of the respondent No.1/injured. The balance 50% of the award amount alongwith interest accrued thereon be released in favour of the respondent No.1/injured.

Copy of the order be given *dasti* to learned counsel for the parties.

PRATIBHA RANI, J.

AUGUST 14, 2015

‘st’