**REPORTABLE**

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

**CIVIL APPEAL NO(S). 2008-09/2014**
[Arising out of S.L.P.(Civil) Nos. 35565-35566/2011]

G. DHANASEKAR ... APPELLANT (S)

VERSUS

M.D., METROPOLITAN TRANSPORT CORPORATION LIMITED ... RESPONDENT (S)

**J U D G M E N T**

**KURIAN, J.:**

Leave granted.

**2.** Whether an accident victim is entitled to get compensation for functional disability? If so, what is the method for computation of compensation? These are the two issues arising for considerations in this case.

**3.** Computation of just and reasonable compensation is the bounden duty of the Motor Accident Claims Tribunal. In view of the plethora of judgments rendered by this Court regarding the approach to be made in the award of compensation, we do not find it

necessary to start with the first principles. In **Rajesh and Others** v. **Rajbir Singh and Others**[1], **Master Mallikarjun** v. **Divisional Manager, The National Insurance Company Limited**[2] and in **Rekha Jain** v. **National Insurance Company Limited and Others**[3], this Court recently has extensively dealt with the principles governing the fixation of compensation and the approach to be made by the courts in that regard.

**4.** In **Rekha Jain's** case (supra), this Court following the case of **National Insurance Company Limited** v. **Mubasir Ahmed and Another**[4], developed a very important principle on functional disability while fixing the compensation. Rekha Jain, a cine artist suffered an injury in a motor accident at the age of 24 years on account of which she suffered 30% permanent partial disability which included disfigurement of her face, change in the physical appearance, etc. It was found that on account of such development, she could no more continue her avocation as an actress and, hence, it was held that

[1] (2013) 9 SCC 54
[2] 2013 (10) SCALE 668
[3] (2013) 8 SCC 389
[4] (2007) 2 SCC 349

she had suffered 100% functional disability. Hence, this Court awarded compensation following the principles laid down in **Sarla Verma (Smt.) and Others v. Delhi Transport Corporation and Another**[5].

**5.** As far as compensation for functional disability is concerned, it has to be borne in mind that the principle cannot be uniformly applied. It would depend on the impact caused by the injury on the victim's profession/career. To what extent the career of the victim has been affected, thereby his regular income is reduced or dried up will depend on the facts and circumstances of each case. There may be even situations where the physical disability does not involve any functional disability at all.

**6.** Now, we shall refer to the factual matrix. The appellant, driver by profession and operating a tourist taxi himself, met with a motor accident on 05.09.2008. While driving the Tata Sumo car, a bus operated by the respondent, came from the opposite direction and dashed against the car. The appellant suffered fracture on right leg and right arm.

[5] (2009) 6 SCC 121

According to the doctor, on account of the injuries suffered by the appellant and the operations undergone by him to fix a thick plate in the *tibia* bone with five screws, the appellant will not be in a position to bend his right knee beyond 90 degrees. There is shortening of the leg by one centimeter on account of nerve injury. He would be limping while walking. He cannot lift weight over 3 kilograms. His right hand movement is restricted to 25 degrees. He will not be able to drive two wheelers and he can drive four wheelers with difficulty. To quote PW1(appellant):

> "After the incident, I cannot bend my right knee beyond 90 deg. I cannot use my right hand for lifting any weighty objects. The movements in my right hand elbow and wrist has almost been restricted. I am not in a position to drive the vehicles as before. I cannot use Indian toilet or squat or carry weight. I am walking with limping. Walking and standing for some time is a painful one. Because of the dislocation of bone in the lower jaw, I am not able to open my mouth fully and speak coherently. I find it very difficult to eat hard objects. I am suffering from intermittent head ache and giddiness. I have completely lost my earning capacity. I am having severe pain and suffering."

**7.** The Tribunal awarded a total compensation of Rs.4,50,000/-. The Tribunal found that the appellant

has contributed to the accident and, hence, the liability of the respondent was fixed at 50%. In appeal before the High Court, it was held that the contributory negligence on the part of the appellant is only 30%. The compensation was also refixed to an amount of Rs.3,20,000/-. Thus, the appellant was held entitled to Rs.2,24,000/- with interest @ 7.5% per annum.

**8.** Thus, aggrieved, the claimant has filed these appeals. There is no appeal by the respondent.

**9.** It is mainly contended by the learned counsel for the appellant that the Tribunal and the High Court erred in not taking into consideration the factor of his functional disability. Since, it is in evidence that the appellant cannot continue his avocation of driver as earlier, he should be reasonably compensated in that regard, it is submitted. Yet another strong submission is with regard to the finding on contributory negligence. It is contended that only the driver of the offending vehicle is negligent, he is wholly negligent

and that there is no negligence on the part of the appellant.

**10.** We shall first deal with the aspect of contributory negligence. There is no dispute that the vehicles were coming in opposite direction. It has also come in evidence that the driver of the bus has filed a complaint before the police and the police has registered an FIR. Except the driver of both the vehicles and the doctor who treated the appellant, there is no other oral evidence. The FIR, disability certificate, medical bills, driving licence, RC book and permit were also marked. The Tribunal, having referred to the entire evidence, held as follows:

> "On perusal of Ex.R.1. FIR and from the evidence of the Petitioner and RW.1. driver of the bus, it is clear that both the vehicles came in a rash and negligent manner and with high speed and dashed against each other. In the above accident, the driver of the Tata Sumo was injured. Taking advantage of the situation, the driver of the bus gave complaint to Police. Hence the driver of the bus gave complaint accusing the driver of the Tata Sumo car. No other independent witnesses were examined.
>
> Hence this Court comes to the conclusion that the bus came in a rash and negligent manner and dashed against the deceased (*sic*: car). Hence it is concluded that negligence on the part of the

driver of the bus is the root cause of the accident. The evidence of RW.1 driver shows that he simply throws the blame on the injured."

(Emphasis supplied)

**11.** It is strange that having arrived at such finding regarding negligence on the part of the driver of the bus, the Tribunal proceeded further in holding that:

"The manner of the accident shows that both the vehicles came in an uncontrollable speed and dashed against each other. Hence the impact of the accident was very heavy and both the vehicles damaged heavily. Hence this court comes to the conclusion that both the vehicles came in a rash and negligent manner with high speed and dashed against each other. Hence it is concluded that contributory negligence is fixed on the driver of both vehicles and negligence on the part of the drivers of both vehicles is the root cause of the accident and they are equally responsible for the accident."

(Emphasis supplied)

**12.** It needs no elaborate discussion to hold that the findings are intra contradictory. Unfortunately, despite specific ground taken before the High Court, this aspect of the matter was not considered properly. It was, however, held that:

"... Considering the fact that no other eye witness has been examined and the respective drivers alone have been examined, we have to consider their evidence in the light of surrounding circumstances. If so considered, then it cannot be

precisely decided that one of them was solely responsible for the accident. Considering the aforesaid facts, we fix 30% negligence on the part of the claimant and 70% negligence on the part of the driver of the bus. ...”

**13.** PW1 has stated that a passenger in the bus was thrown out of the bus through the front windscreen and that the car took a u-turn on account of the impact of the accident. Apparently, it was this evidence which lead to the first finding by the Tribunal that the negligence on the part of the driver of the bus was the root cause of the accident and it was the bus which dashed against the car. Having entered such a finding, another finding on contributory negligence is unsustainable. Unfortunately, without proper appreciation of the evidence, the High Court has fixed 30% negligence on the part of the appellant, which we find it difficult to sustain. Therefore, in the light of evidence available in this case, we restore the first finding of the Tribunal that the negligence on the part of the bus driver is the root cause of the accident.

**14.** As noted above, appellant is a driver operating a tourist taxi. On account of the physical disability referred to above, it needs no elaborate discussion to hold that he would not be in a position to continue his avocation at the same rate, or in the same manner as before. He was aged 46 years at the time of accident. Therefore, we are of the view that it is a case where the appellant should be given just and reasonable compensation for his functional disability as his income has been affected. The court has to make a fair assessment on the impact of disability on the professional functions of the victim. In this case, the victim is not totally disabled to engage in driving. At the same time, it has to be seen that he cannot continue his career as earlier. In such circumstances, the percentage of physical disability can be safely taken as the extent of functional disability. In the assessment of the doctor, it is 35%. Since the appellant is compensated for functional disablement, he will not be entitled to any other compensation on account of physical disability or loss of earning capacity, etc. However, he is entitled to reimbursement towards medical expenses, etc. The

Tribunal has fixed income of Rs.10,000/-. There is no serious dispute on this aspect. Therefore, applying the principle laid down by this Court in **Rajesh's and Others** case (supra), the appellant is entitled to compensation as computed below:

| Sl. No. | HEADS | CALCULATION |
|---|---|---|
| (i) | Annual Income = Rs.10,000 x 12 = | **Rs.1,20,000/-** |
| (ii) | After deducting 1/3rd of the total income for personal expenses, the balance will be = [Rs.1,20,000/- **-** Rs.40,000/-] = | **Rs.80,000/-** |
| (iii) | Add 30% towards increase in future income, as per **Sarla Verma and Rajesh and Others** cases (supra) = | **Rs.1,04,000/-** |
| (iv) | Compensation after multiplier of 13 is applied = [Rs.1,04,000/- **x** 13] = | **Rs.13,52,000/-** |
| (v) | Applying the 35% functional disability, the appellant will be entitled to the compensation of 35% of Rs.13,52,000/- = | **Rs.4,73,200/-** |
| (vi) | Reimbursement towards medical expenses = | **Rs.60,000/-** |
| (vii) | Amount towards extra nourishment, etc. | **Rs.10,000/-** |
| (viii) | Damages to the vehicle (as awarded by the High Court) = | **Rs.10,000/-** |
| (ix) | Amount towards actual loss of earning during the period of hospitalization and thereafter during the period of rest = | **Rs.40,000/-** |
| (x) | Amount towards pain and sufferings = | **Rs.10,000/-** |
| (xi) | Amount towards expenses on attendant = | **Rs.10,000/-** |
| **TOTAL COMPENSATION AWARDED** [(v)+(vi)+(vii)+(viii)+(ix)+(x)+(xi)] | | **Rs.6,13,200/-** |

**15.** The amount of total compensation awarded shall carry interest @ 7% per annum from the date of filing the petition before the Motor Accident Claims Tribunal till realization.

**16.** The appeals are allowed as above. There is no order as to costs.

**1**

**.....**

**.....J.**

**(SUDHANSU JYOTI MUKHOPADHAYA)**

**.....**

**.....J.**

**(KURIAN JOSEPH)**

**New Delhi;**
**February 12, 2014.**