

**Devinder Singh Vs. Sunil Jain and ors.**

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**Court :** Delhi

**Decided On :** Sep-13-1995

**Reported in :** II(1995)ACC681

**Judge :** C.M. Nayar, J.

**Appellant :** Devinder Singh

**Respondent :** Sunil Jain and ors.

**Judgement :**

**C.M. Nayar, J.**

1. The present appeal is directed against the award dated February 10, 1982 passed by Shri S.P. Saberwal, Judge, Motor Accident Claims Tribunal, Delhi.

2. The appellant Shri Devinder Singh filed the claim petition under Section 110-A of the Motor Vehicles Act, claiming compensation of Rs. 4,50,000/- on account of injuries sustained by him in an accident that took place on April 2, 1974 at 12.55 hours at Janpath, New Delhi. He was going on scooter No. DHQ-2750 from Air India Office, Janpath to Lodhi Hotel and when he reached near Eastern Court, respondent No. 1 who was driving his car No. DHC-1157 hit him on the side and caused fracture of left leg and small finger besides abrasions on elbow and the back. It was alleged that the car was being driven in a rash and negligent manner and the driver was not having a proper look out as a result of which he dashed his

car into the scooter of the appellant who was going at a normal speed. The appellant remained under treatment for a period of six months on the date of filing of the petition and the said treatment was still continuing.

3. The claim petition was contested by respondents 1,2 and 3 and joint written statement was filed on behalf of respondents 1 and 2 whereas separate written statement was filed by respondent No. 3. The pleas taken, however, were common. According to the respondents, the car No. DHC-1157 was parked in the parking lot outside Chanderlok building. The driver was sitting in the car waiting for his master, when the said car was parked, the appellant who was driving the scooter and coming from the side of Connaught Place without care and proper look out, reached the parking lot and suddenly took his scooter to the right and in doing so, he lost control and back side of the scooter grazed the front bumper of the car.

4. The following issues were framed:

1. Whether the accident resulting in injuries to the petitioner was caused due to rash, reckless and negligent driving of car No. DHC-1157 on the part of respondent No. 1 or respondent No. 4 ?

2. Whether the respondents are not liable for the reasons alleged in para 2 of the preliminary objections of the written statement ?

3. To what amount of compensation, if any, is the petitioner entitled and if so, from whom ?

4. Relief.

The learned Judge disposed of issues 1 and 2 by holding that the accident was caused due to rash and negligent driving of car No. DHC-1157 on the part of respondent No. 4 Sharif Ahmed. The Tribunal referred to the evidence of PW8 Harbans Singh, who was an independent eye-witness to the occurrence as well as to the First Information Report lodged against respondent No. 4. Ex. PW3/1. The copy of the judgment convicting the said respondent under Section 279/338 IPC was placed on record as Ex. PW9/G. The appellant himself appeared as PW10

and reiterated the averments made in the claim petition that he was hit by the offending car which resulted in fracture of his left leg. The statement of Investigating Officer will further indicate that the driver was arrested on the spot and the car was taken into possession vide recovery memo Ex. PW9/B. In this background, the pleas taken by the respondents were obviously false and the stand that the car was stationary in the parking lot was liable to be rejected. There is no infirmity in the finding of the Tribunal and the same is affirmed.

5. The Tribunal then determined the quantum of compensation while disposing of issues 3 and 4. The claim was considered under separate heads. The medical evidence was brought on record which indicated that the appellant suffered mental pain and agony as a result of the injuries sustained by him. The appellant appeared as PW10 and deposed that he was taken to Willingdon Hospital in a police car as he sustained fracture in his left leg. He further stated that he was plastered in the said Hospital and was discharged in the evening. The treatment continued for six months and the plaster was removed. He used to visit the Hospital for physiotherapy treatment when he slipped on the floor and his leg was again fractured at the same spot. The medical evidence clearly indicated that the appellant's leg had remained under plaster for over one year and that nail was inserted in his left leg from knee to ankle by performing operation in Irwin Hospital. The appellant had been visiting the Hospital on various dates for subsequent follow up of the treatment and remained confined to bed from April 2, 1974 to October, 1975.

6. The learned Judge accepted the averments and held that the same were fully trustworthy as being corroborated by medical evidence. In the facts and circumstances of the case, he awarded a sum of Rs. 10,000/- as compensation under the head 'general damages', which will include mental pain, agony and sufferings. The amount so awarded does not seem to be adequate in the present case. The appellant suffered fracture of the left leg and the treatment continued for over a year. This obviously has caused him inconvenience, discomfort as well as suffering. This amount is, therefore, enhanced to Rs. 20,000/-. The claim for special diet has been allowed, as claimed by the appellant in the sum of Rs. 5375/ There is no challenge to the same and the same is affirmed.

7. Similarly, the amount for conveyance as well as for purchase of medicines was assessed at Rs. 975/- and Rs. 140/- respectively. This is also not in challenge and is, accordingly, affirmed. The appellant claimed a sum of Rs. 2,040/- for engagement of attendant. This claim was allowed in to and, therefore, no further increase is required. The claim for permanent disability was rejected as the Tribunal held that the appellant had not suffered from any permanent disability on the basis of assessment of evidence as PW 1 Dr. A.K. Khosla could not say whether there was any shortening of leg of the appellant. There is no error in this finding which requires reconsideration. The claim for loss of earning as a result of the accident was made in the sum of Rs. 4 lakhs which also included on account of loss of future earnings. The Tribunal assessed the evidence on record and came to the conclusion that the appellant was entitled to just compensation depending upon the facts and circumstances of the case and the claim on account of future loss of earnings was rejected for want of sufficient evidence on record. There is no doubt that the said claim is exaggerated and cannot be allowed. However, the figure which has been assessed by the Tribunal does not seem to be just, fair and reasonable in view of the facts of the case and the status of the appellant. He was a Graduate and had passed three years Diploma Course in Hotel Management from Pusa, New Delhi. It was further alleged that he had gone to West Germany where he was holding a job carrying a gross salary of D.M. 1200/- (Rs. 3,600/-approximately) in terms of Indian currency. The appellant, therefore, was duly qualified to attain good status in life in matters of employment and settlement. The Tribunal has assessed the potential earning in the sum of Rs. 500/- per month and by multiplying it by 1-1/2 years, as the appellant was alleged to be confined for treatment during that period, awarded a sum of Rs. 9000/-. This figure is rather on the lower side. The appellant is continuing to do well as is stated by learned Counsel appearing in the matter and is presently working abroad. He, however, argues that the appellant has not been able to secure any employment for a period of 3 years as for most of the period he was only recovering from the injuries sustained in the accident. In view of the facts and circumstances of the present case, I am inclined to enhance the amount of Rs. 500/- per month as awarded by the Tribunal to Rs. 1000/- per month for a period of two years. The amount is, therefore, assessed at Rs. 24,000/- under this head.

7. In the ultimate analyses the appellant is entitled to the following amounts under the respective heads:

1. Mental Pain, agony & suffering Rs. 20,000.002. Special diet etc. Rs. 5,375.003. Expenses incurred on conveyance Rs. 975.004. Expenses on medicines Rs. 140.005. Expenses for engagement of attendant Rs. 2,040.006. Loss of earnings including future loss of earnings Rs. 24,000.00-----Total Rs. 52,530.00-----

8. The appellant is, therefore, held entitled to Rs. 52,530/-. He shall further be entitled to interest at the rate of 15 per cent per annum from the date of the petition till realisation as well as costs which are quantified at Rs. 2,500/-. This appeal is allowed in the above terms.

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