

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 2531 OF 2020
(ARISING OUT OF SLP(C) No.26857/2015)

ANIL CHAUDHRY

APPELLANT(S)

VERSUS

NATIONAL INSURANCE COMPANY LIMITED

RESPONDENT(S)

O R D E R

Leave granted.

Heard learned counsel for the parties.

The claimants have come up in appeal, dissatisfied with the award of compensation passed by the High Court. The claim petition was filed before the Motor Accident Claims Tribunal (for short, "the Tribunal"), with respect to the accident allegedly caused due to the rash and negligent driving of the truck bearing Registration No.DEG-2343 on the Ring Road area, Nizamuddin, New Delhi. The truck, which was going ahead of the car, stopped all of a sudden and due to that, the car driven by Anil Chaudhry/appellant dashed against the truck. He sustained injuries and claimed compensation of Rs.20,00,000/- for the injuries sustained along with interest. The age of the appellant, at the relevant

time, was 35 years. He was a television serial producer and claimed that he used to earn Rs.10,000/- per month.

The owner and the driver of the truck did not contest the case. The case was contested only by the Insurance Company. The Tribunal recorded the following finding with respect to the negligence in paragraph 5 and 6 of the order, which are extracted hereunder:-

"5. NEGLIGENCE In order to prove negligence on the part of truck driver, petitioner testified that on 15.04.93 at about 10.30 PM the petitioner was driving the car No.DL-4C-2923 and was going on ring road. When he reached opposite Hot Mix Plant, the driver of truck bearing registration no.DEG-2343 which was going ahead of the car all of a sudden stopped the truck. To avoid impact, the petitioner swerved his vehicle to the left side and despite best efforts, the front portion of the car hit against the left rear portion of truck. It is not in dispute that a case FIR, Ex.PW1/A was registered in respect of this accident.

6. It is submitted by Ld. Counsel for insurance company that there was negligence on the part of petitioner who was under the influence of liquor at that time as well as it is who hit the truck. On the other hand,

it is submitted by Ld. Counsel for petitioner that there was no negligence on the part of petitioner. The statement of petitioner regarding negligence on the part of truck driver remained unchallenged. Even the owner of the truck has not preferred to contest the claim petition. It is significant to note that insurance company specifically took the plea in the WS that accident has taken place due to the negligence of petitioner himself. It is proved from medical record that when the petitioner was taken to hospital after the accident there was smell of liquor in his breath. Though as per him, truck stopped abruptly and he swerved his vehicle to the left side but still the accident took place. It is a matter of common knowledge that a safe distance is to be kept between the vehicles while driving. The fact that despite of the efforts made by the petitioner he could not avoid the accident shows that he was also driving his car at a fast speed and also he has consumed liquor. Definitely there was contributory negligence on the part of the petitioner to the extent of 50%."

The Tribunal found negligence of the appellant to be 50% and awarded total compensation of Rs.92,000/- (50% of

Rs.1,84,000/-) along with interest @ 6% per annum.

The High Court, on appeal, found that the appellant has incurred 50% disability on account of injury in the loss of vision of the right eye. The vision of the right eye was lost 6/6. The compensation has been enhanced from Rs.1,84,000/- to Rs.4,08,000/-.

An amount of Rs.2,88,000/- was granted for the loss of earning capacity on account of injury. Since the High Court affirmed the finding of the Tribunal for contributory negligence, the compensation awarded due to disability of Rs.2,24,000/- was reduced to Rs.1,12,000/- (50% of Rs.2,24,000/-). Thus, the compensation was enhanced to the extent of Rs.1,12,000/-, the same was ordered to carry interest @ 7.5% per annum from the date of filing of the claim petition till the amount was deposited.

We have heard learned counsel for the parties. The first question raised by the learned counsel for the appellant is with respect to the negligence of the appellant. He argued that the truck stopped all of a sudden on the ring road, as such, the driver of the car, who was coming behind, could not be said to be at fault. No evidence was adduced by the respondent in rebuttal to

the evidence adduced on behalf of the appellant. Merely by the fact that smell of alcohol was found at the time of medical examination of the appellant, could not be said to be a ground to infer 50% negligence on his part. Learned counsel appearing for the respondent controverted the aforesaid submission with respect to the negligence. Considering the findings recorded by the Tribunal that the truck was going ahead of the car and all of a sudden truck stopped, there was no rebuttle evidence adduced by respondents, it could not be said that, inspite of maintaining the safe distance, the driver of the car was responsible for dashing against the truck. The driver of the car could not have avoided collision. Thus, the inference recorded by the Tribunal, in the absence of evidence that he was driving at a fast speed is based on surmises and conjunctures, merely by the fact that some smell of alcohol was found, in the facts of the case, consumption of some alcohol could not be said to be attributable to the accident. Moreover, there is no evidence that he was over-drunk or drove the vehicle rashly, in the facts of the instant case, as there was absolutely no rebuttal of the evidence adduced on behalf of the appellant. A criminal case was also registered as

against the driver of the truck. He ought to have been examined on behalf of the respondent, in order to prove that he was not negligent. In the facts of this case, we find that the negligence cannot be attributed to the appellant. As such, the finding with respect to 50% negligence of the appellant is hereby set aside.

Coming to the quantum of compensation, it would be appropriate to assess the income of the claimant not at Rs.3,000/- but at Rs.5,000/- per month, since the appellant was involved in producing television serials. He suffered severe injuries and 6/6 loss of vision of the right eye, thus, considering 50% disability and taking income as Rs.5,000/-, loss of permanent earning capacity comes to Rs.2,500/- per month (i.e. Rs.30,000/- annually). Multiplier of 16 is applicable. Thus the amount comes to Rs.4,80,000/-. In addition, as per the Constitution Bench decision of this Court in National Insurance Company Limited v. Pranay Sethi and Others, reported in (2017) 16 SCC 680, 40% i.e. Rs.1.92,000/- has to be awarded towards future prospects. We order accordingly. In addition, we affirm the sum awarded on the other heads by the High Court i.e. Rs.15,000/- for conveyance charges, Rs.15,000/- towards special diet,

Rs.20,000/- towards pain and suffering, Rs.50,000/- towards loss of amenities and Rs.20,000/- towards cost of treatment and medicines. Thus, the total compensation comes to Rs.7,92,000/-. The enhanced compensation to carry interest @ 7% per annum from the date of filing claim petition till realization. Let the amount be deposited with the Tribunal within ten weeks from today.

The appeal is allowed to the above extent.

Pending application(s), if any, shall stand disposed of.

.....J.
[ARUN MISHRA]

.....J.
[INDIRA BANERJEE]

NEW DELHI;
JUNE 08, 2020.

ITEM NO.23

Virtual Court 3

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 26857/2015

(Arising out of impugned final judgment and order dated 10-02-2015 in MACAP No. 629/2007 passed by the High Court Of Delhi At New Delhi)

ANIL CHAUDHRY

Petitioner(s)

VERSUS

NATIONAL INSURANCE COMPANY LTD. .

Respondent(s)

Date : 08-06-2020 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MS. JUSTICE INDIRA BANERJEE

For Petitioner(s) Mr. G. Tushar Rao, Adv.
Mr. Nitinjya Chaudhry, Adv.
Ms. Jyoti Mendiratta, AOR

For Respondent(s) Mr. Rohit Kumar Singh, Adv.
Mr. Sanjay Kumar Singh, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed to the extent indicated in the signed order.

Pending interlocutory application(s), if any, is/are disposed of.

(JAYANT KUMAR ARORA)
COURT MASTER

(JAGDISH CHANDER)
ASSISTANT REGISTRAR

(Signed order is placed on the file)