



2025:DHC:53



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

% **Reserved on: 04th October, 2024**
Pronounced on: 08th January, 2025

+ **MAC. APP. 139/2021**

DEPUTY COMMISSIONER OF POLICE

Provisioning and Logistics
Delhi Police
5, Rajpur Road, North Delhi,
New Delhi, 110049

.....Appellant

Through: Mr. Anurag Ahluwalia, CGSC with
Ms. Hridyanshi Sharma, Advocate.
S.I. Hari Kumar, MT Traffic & S.I.
Joginder Singh, Parvi Officer Traffic.

versus

1. **RAHUL**
S/o Sh. Omprakash
R/o H. No. 1690,
Basti Julan, Sadar Bazar,
Delhi - 110006Respondent No.1

2. **SANJAY KUMAR (Driver)**
Head Constable, Delhi Police
R/o 1/7485
Gali No. 14, East Gorakh Park
Shahdara, Delhi- 110032Respondent No.2

Through: None

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T



NEENA BANSAL KRISHNA, J.

CM APPL. 10699/2021 (delay)

1. An Application under *Section 5* of the *Limitation Act, 1963* read with *Section 151* of the *Code of Civil Procedure, 1908* ('CPC' hereinafter') has been filed on behalf of the Appellant, seeking delay of 454 days in filing the accompanying Appeal.
2. For the reasons stated in the Application, the delay of 454 days in filing the accompanying Appeal is condoned and the Application is allowed.
3. The Application is accordingly disposed of.

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4. The Appeal under *Section 173* of the *Motor Vehicles Act, 1988* ('M.V. Act' hereinafter) has been filed on behalf of the Appellant, the Deputy Commissioner of Police, to set-aside the Award dated 17.11.2018, *vide* which the compensation in the sum of Rs.7,75,000/- along with the interest @9% has been granted, on account of the injuries suffered by the Respondent, Mr. Rahul, aged about 27 years, in a road accident on 28.09.2014.
5. The *grounds on which the Award has been challenged* are:
 - (i) that it was a case of *contributory negligence* and the Respondent himself was at fault in failing to exercise due care while crossing the road;
 - (ii) that the *Functional Disability* has been assessed as **15%** even though the *Permanent Disability* suffered was assessed as **27%**; and
 - (iii) that the *Loss of Income* has been calculated for *nine months*



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@Rs.8,554/- per month without any proof by the Respondents/injured.

6. Learned counsel on behalf of the **Respondent/Claimant**, however, has submitted that his income has been taken as per the Minimum Wages, which cannot be faulted. He was a musician by profession and his Functional Disability has been rightly taken as 15%. It is submitted that the Appeal is without merit and is liable to be dismissed.

7. **Submissions heard and record perused.**

8. The *facts in brief* are that on 28.09.2014 at about 10:50 p.m., the injured, Mr. Rahul had gone to Circular Road, Shahdara, to perform Maa Bhagwati Jagran. He came out to answer the nature's call in front of Blind School Circular Road, when suddenly the Motorcycle bearing No. DL 1SN 9389 (offending vehicle) driven by the Head Constable, Mr. Sanjay Kumar, in a rash and negligent manner, hit him and caused multiple injuries. He was taken to Dr. Hedgewar Hospital, for treatment.

9. FIR No. 766/2014 under Section 279/338 of the Indian Penal Code, at Police Station Farsh Bazar, was registered against the driver, Mr. Sanjay Kumar. On completion of investigations, the Chargesheet was filed against him.

10. The Detailed Accident Report (DAR) was filed before the learned Tribunal. The learned Tribunal after considering the record and the evidence, *granted compensation in the sum of Rs.7,75,000/- along with the interest @9% p.a.*

Contributory Negligence:

11. The *first ground of challenge* is that the Petitioner was guilty of



contributory negligence. The injured as PW-1 had deposed that as he had come out on the road in front of the Blind School Circular Road, he was hit by the Head Constable, Mr. Sanjay Kumar, who was driving the Motorcycle in the rash and negligent manner. He noted the number of Motorcycle before he fled away from the spot. He was taken to Dr. Hedgewar Hospital where his MLC was prepared. The Petitioner/Injured was not cross-examined by either the driver or the owner on the aspect of the negligence. There was not even one suggestion given that the injured was negligent in any manner or had contributed to the accident.

12. The testimony of the injured is fully supported by the Site Plan, Ex.PW-2/1, which also shows that the accident had occurred at Point 'A', which was on the extreme right side of the road. The injured was a pedestrian, who had crossed almost the entire road. The driver of the offending Motorcycle was coming from the straight road and was under an obligation to ensure that no pedestrian, who may be on the road, is hit by him. Despite it being a straight road and the injured being on the extreme right side of the road, the driver failed to exercise due care and caution and hit the Motorcycle into the injured.

13. The testimony of the injured which is fully corroborated by the Site Plan, establishes the sole negligence of the driver.

14. It may also be pertinent to observe that the Chargesheet in FIR No.766/2014 has also been filed against the driver of the offending vehicle. Pertinently, RW-1, the Driver, Mr. Sanjay Kumar, in his Affidavit of evidence, Ex.RW-1/A, had denied the factum of the accident itself, which is belied by the filing of the Chargesheet against him, in which he is facing the



trial.

15. The testimony of the injured coupled with the criminal record, fully establishes the sole negligence of the driver. *There is no element of contributory negligence attributable to the injured. This ground of the appellant, is without any merit.*

Functional Disability:

16. The *second ground of challenge* is that the Petitioner had suffered 27% Permanent Disability of left lower limb. Though, the injured had asserted that being a musician by profession and he has suffered 100% Functional Disability for his work as he cannot work again, but the learned Tribunal rightly observed that there was no evidence to this effect. The efficiency of the injured no doubt would go down, but it cannot be held that he has become totally incapable of continuing his profession. The Functional Disability of the injured was taken as 15% of the whole body.

17. In the factual circumstances and considering the nature of Permanent Disability and the profession of the injured, *the learned Tribunal has rightly assessed the Functional Disability as 15%, which does not merit any interference.*

Income of the Injured:

18. The *third ground of challenge* is that the injured has not produced any proof of his income. The learned Tribunal while observing that there is no proof of income, has rightly assessed it on the basis of Minimum Wages as Rs.8,554/- per month. Again, there is no merit in the Objection raised on behalf of the Appellant.

Compensation under the Non-Pecuniary Heads:



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19. The *last ground* which has been taken on behalf of the Appellant is that the compensation granted under the *Non-Pecuniary Heads*, is on the higher side.

20. The Pain and Suffering has been granted in the sum of Rs.75,000/-; for conveyance and Special diet as Rs.25,000/-; for mental and physical shock as Rs.50,000/-, for Loss of Amenities of Life as Rs.25,000/-, for Inconvenience Hardships and Frustration and Permanent Disfiguration as Rs.50,000/-.

21. The amount under various Non-Pecuniary Heads when considered in the light that the injured had suffered Permanent Disability to the extent of 27% of left lower limb and that he is a young man of 23 years, who has his entire life to ahead of him, *the compensation amount under Non-Pecuniary Heads cannot be said to be excessive.*

Conclusion: -

22. Ther is no merit in the present Appeal, which is hereby dismissed.

**NEENA BANSAL KRISHNA
(JUDGE)**

JANUARY 08, 2025/RS