Delhi High Court
M. Fareeduddin vs Sri Lal And Ors. on 5 February, 1982
Equivalent citations: 22 (1982) DLT 279
Author: R Sachar
Bench: R Sachar
JUDGMENT Rajindar Sachar, J.

(1) These three appeals will be disposed of by the common judgment. They arise out of three suits filed before the Motor Accident Claims Tribunal under Section Ii 0-A of the Motor Vehicles Act. Appeal No. 139/1975 is by claimant, Fareeduddin against Sri Lal and Others; Appeal No. 144/1975 is by Gopal Transport Go. against Fareeduddin and Appeal No. 145/1975 is by Gopal Transport Go. against Shiv Nath Mehta.

(2) Appellant in appeal No. 139/1975 has asked for enhancement of the amount awarded in the original suit (No. 342/1967) by which the tribunal awarded him a sum of Rs, 36,925.00 . Gopal Transport Company, the owner of the bus which was found by the tribunal to have been driven rashly and negligently by the driver, Sri Lal, and responsible for causing the accident. Appeal No. 144/1975 is against the grant of the damages to the appellant/ Fareeduddin. Appeal No. 145/1975 is filed against the grant of compensation to two other persons namely, Shiv Nath Mehta in the original Suit No. 350/ 1967 of Rs. 7070.00 . No appeal has been filed against the grant of compensation to Sham Lal.

(3) I will first take up Appeal No. 139/1975. The accident which gave rise to the claim by the appellant, M. Fareeduddin and others occurred on 13-8-1967. The case of the appellant was that he was traveling in bus No. DLP-1152 belonging to the Delhi Transport Union (D.T.U.) which was coming from the Railway Station and going to Kalkaji. As the bus reached near the Hardings Bridge and turned towards Mathura Road a private bus belonging to respondent No. 3 being bus No. D.L.P, 3654 came from the opposite side. It was being driven rashly and negligently. The said bus hit the D.T.U. bus on the right side and dragged it towards the extreme left of the road and it struck it against a tree. The appellant who was sitting on the right side seat of the D.T.U bus was struck severely on his forearm and sustained injuries and he became unconscious. Later on he was removed to the hospital. He had to undergo series of operations and suffered loss of his earning capacity ; he claimed Rs. 3 lakhs as compensation.

(4) The first important issue naturally was whether the appellant suffered injuries due to the rash and negligent driving of Vehicle No. DLP-3054. The appellant gave his own evidence as well as the evidence of the witnesses who all deposed that the .DTU bus was coming on its correct side and at a proper speed. The bus DLP-3654 however came from the opposite direction and was being driven rashly and negligently. It struck on the right side of the Dtu bus and dragged it to the tree. The fact that the accident took place on the left side of the road which was the correct side so far as the D.T.U. bus is concerned further supports the version that the accident was caused because of rash and negligent driving of driver of the bus No.DLP-3654. Sri Lal, driver of DLP-3654 during his evidence sought to suggest that he was not driving the bus but the same was being driven by the Conductor. This stand of his of course was completely contrary to the stand taken in the written

statement where he had admitted that he was driving the said bus. The topography at the place of accident and the other evidence convinced the trial court and after going through title same I find no reason to disagree with it, that the accident resulting in injuries to the appellant and others was caused due to the rash and negligent driving of bus No. DLP-3654 on the part of Sri Lal, respondent No. 5. The finding of issue No. I is) therefore, affirmed.

(5) The next question relates to the nature of injury and the loss and damage suffered by the appellants. The trial court has awarded a sum of Rs. 36.925.00 made up of Rs. 20,000.00 on account of loss of earning capacity. Rs, 10,000.00 as general damages, Rs. 5,400.00 on account of special diet at the rate of Rs. 5.00 per day for a period of 3 years and Rs. l,524.00 on account of actual medical expenses. Mr. Mahajan the learned counsel for the appellant very strongly challenged the finding of the trial court on assessment of these damages, and urged that wrong principles and irrelevant considerations have been applied to give a grossly under-compensation. Mr. Mahajan objected to a paltry amount of Rs. 1524.00 for medical expenses, and on account of special diet. Though there may be some plausibility in the argument of the counsel for the appellant but the difficulty is that apart from a mere chart produced by the injured as to the expenses incurred by him there is no concrete proof as to the actual medical and diet expenses incurred by him to show that the figure worked out by the trial court was in any way so unreasonable so as to call for interference. Therefore, the amount of damages on these two accounts does not call for any change nor am I inclined to interfere with the award of Rs. 10,000.00 on account of general damages-after all there is always anelement of surmise in the way of assessment in this court.

(6) Mr. Mahajan naturally reserved the most serious objection to the calculation on account of the loss of earning capacity worked out by the trial court. The appellant has given evidence which has not in any way been countered that he belongs to a family which has been known to have specialised in Mnghal painting for centuries. The appellant and his brothers were also having a Mughal Art Gallery and paintings by them were being displayed and sold there. That the appellant was a person of recognised talent is clear from Public Witness 10/84 by which he was informed that he as well as his brother had been selected by the All India Handicrafts Board for National Award to Mastercraftsmen for painting on Ivory as far back as 12-2-1978. PW-10 has deposed that his family has received awards from Mughal courts and that he was also a painter of Mughal Arts, Miniature painting and his ' painting is a specialised thing and is done with hand-made brushes. That the appellant had great potential as a painter and had at quite an early age received Highly Commanded Certificate stands proved from the certificate of the Bombay Art Society which is Ex. Public Witness 1/21 dated 20th January, 1962. He was also awarded a third prize (Bhulabhai Memorial Prize) by the Bombay Art Society in 1962 for a picture of Akbar with his Navrattans. This was an All India Competition. There is the evidence of B. G. Sanyal, Pw I who in his own right is a painter of repute. He retired as a Secretary of Lalit Kala Academy in 1969. He has deposed that he has seen the works of the appellant and the appellant's brother and appellant and his brother are two of the very few painters of the Mughal Miniature Art alive in India and the said art is dying so far as India is concerned. He has also opined that the paintings done by the appellant were excellent. He also expressed doubt whether the appellant would be able to hold a brush looking to the condition of his hand. There is thus no doubt that the appellant was fairly high up in the painting ability and had a very good and reasonably prosperous future in paintings career. That this accident has caused a very

serious and grave loss to his earning capacity is clear from even medical evidence given by Dr. Shankaran, who saw the appellant for the first time on 27-3-1968 i.e. almost a year after the accident and at that time he found the patient i.e. the appellant having multiple scars over both the arm and forearm with established non-union of both humerus and both fore-arm bones. He found that the sensation of appellants' hand was maintained and muscle power was very weak. The patient had poor grasp and the operation was advised for both bones at multiple stages for an attempt at Union, Bone grafting operation was done on 18-7-1968 using graft. A plaster was applied which was continued up to 7-3-1969 and on 10th March operation was repeated. The patient continued to have the same nails inside the bone till the middle of 1970. These nails were implanted in 1969 and ultimately they were removed. Public Witness 3 has deposed that the present disability of the patient is a marked shortening of the right fore-arm and lack of movements of the fore-arm in the axis of the fore arm. In addition the patient has got weakness of the right thumb muscle which were totally destroyed at the time of the original injury. The thumb would need further reconstruction for adequate grasp. There is stiffness of the little finger, some limitations of movement of the right elbow joint and right shoulder. He has described the injuries as permanent and disability. In actual fact the appellant Public Witness 10 has deposed that he is not able to do any more painting. According to him he earlier had been doing work for 8 to 10 hours a day out of which about 4 to 5 hours at a. stretch he had to work while sitting on floor which he is not able to do now because his leg becomes senseless. There can thus be no manner of doubt that the injury that was caused to him has left almost permanent scar and a disability for him so far as the career of painting is concerned. It must be appreciated that the work which the appellant was doing was of a very specialised and delicate type for which the mobility and movement of hands, fore-arm are absolutely necessary. The type of miniature painting that the appellant specialised in requires minute and flexible kind of manoeuvering by the hand and forearm, which considering the medical evidence and nature of injuries as deposed by Public Witness 3 it is now impossible for the appellant to attempt. That the appellant, a gifted painter will more or less be out of field of his works, painting, cannot be disputed. This is the only profession which he has known. That this would affect seriously earning capacity is certainly not in doubt. The trial court though it did not accept the figure of Rs. 2000.00 per month earned by the appellant nevertheless broadly accepted that Rs. 12.000.00 per annum was being earned by both the brothers, of which Rs. 6,000.00 per annum would be the share of the appellant. In my opinion though frankly considering that the recognition of painting and the interests which a good section of people have started showing in buying of paintings which is continuously increasing it would have been quite a reasonable estimate to say that the earning of the appellant would have multiplied to much larger an extent than the figure at the modest rate of Rs 500.00 per mensern accepted by the tribunal, but which I am willing to accept. The appellant was a young man of 30 years at the time when the accident took place. The loss has also been worked out by trial court for a period of 30 years. This life expectency of 30 years is reasonable considering that the father of the appellant died at the age of 90 years. The first serious error that he fell into was in assuming that though the appellant may not be able to perform his painting work, it cannot mean that he would become incapable of earning his livelihood in any other field and therefore held that the appellant would be able to earn. Rs. 300.00 per month at least. This approach is unacceptable. The present one is not acase of an ordinary manual worker or a clerical worker suffering some loss of limb and because of that mobility suffering diminition in his earning, you cannot equate the loss of the use of right forearm of a painter to the loss of right foreorm of a manual worker, who may not do some

heavy work but may do some light work. The appellant is a different category. His is a case of total loss which the appellant would incur if he is not able to devote himself to the painting, the only profession he knows. That the appellant with his potentiality as indicated by his award winning and recognised work, would have been in a position to earn much more than Rs. 500.00 per month would be an easy and probable estimate. There is no evidence that the appellant has been able to do some other job-as a matter of fact he has had to leave his partnership with his brother because he could not make any contribution to the firm. There was no scope for diminishing the loss by imagining an income of Rs. 300.00 per month which the appellant was expected to make. Also considering the inevitable increase in earning if the appellant had not suffered any injury, there was no scope for reducing the lossofRs.500.00 per month, even if the appellant was to make some other earning. This would, only at the maximum compensate for the increase in income of the appellant which was inevitable. The minimum, therefore, that the tribunal should have worked out was a loss of Rs. 500.00 per month. There was no justification at all to reduce the amount of Rs. 500.00 by Rs. 300.00 which on some supposition the tribunal expected the appellant to make. Considering that he had spent all his life in painting for which alone he had an aptitude the other alternative type of supposed work to which the appellant could possibly adjust himself is a mere conjecture without any basis. In my view, therefore, the loss to the appellant must and should have been calculated at Rs. 500.00 per month and taking the expectency of 30 years it will work out to Rs. l,80,000.00 . I also do not feel that it was a correct procedure for the Tribunal that having worked the figure of Rs. 40.000.00 , he further reduced it to half i.e. Rs. 20,000.00 . This method does not clearly bring out correctly the loss suffered by the injured I feel that the proper method to work out the loss would be to take the expectancy of life for a period of 30 years, which should be multiplied at the rate of Rs. 500.00 per month. The amount thus conies to Rs, l,80,000.00 . The mere fact that lumpsum would be paid to the appellant is no reason for reducing this amount because the lumpsum payment has also to be balanced against the normal increase in earning that the appellant may expect in the course of years, and also the loss of the purchasing power because of inflationary conditions in economy. The assessment of compensation is by its very nature to be on an estimate that no rigid and fixed rules can be applied. That one of the relevant factors to be taken into account is the decline in the value of money, and that in exceptional cases risk of future inflation can be brought into account in assessment of damages for future loss. See in the connection the eleborate discussion by M. L. Jain, J. in Satbir Singh and another v. Suraj Ram (XX (1931) DLT91). lam, therefore, not inclined to reduce any amount on account of the lumpsum payment. I would, therefore, calculate the loss of earnings as follows :-

(A)Rs. l,80,000.00 on account of loss of earning ; (b) Rs. 10,000.00 as general damages ; (c) Rs. 5,400.00 on account of special diet ; and (d) Rs. 1525.00 on account of medical expenses.

Total amounting to Rs. l,96,925.00 . The appellant would be entitled to the interest @ 6ø/o per annum from the period of 6 weeks from today up to the date of realisation. Appeal No. 139/1975 is allowed as such.

(7) I may note that the insurance company which is insurer for respondent No. 3 has already paid the maximum amount of Rs. 20.000.00 for which it is liable. Mr. Mahajan appearing for the appellants concedes that the extra amount that has been awarded is realisable only against

respondent No. 3, Gopal Transport Company the owner of the bus and respondent No. I the driver, Sri Lal S/o Bansi Lal.

(8) This matter was on my list from Monday the 21st of September onwards. The case reached on 24th and hearing started that day ; it was carried forward to the next day and then because of the weekend this matter was posted for today.Today also I heard the matter for some time and concluded the matter. No appearance has been put in on behalf of the respondents all these days though they have been served. There is no alternative but to decide the appeal in their absence.

(9) So far as the appeals No. 144 and 145/1975 are concerned technically they are beibg dismissed for default as the connected appeal No 139/ 19/5 has been decided on merits in which I have already held that the accident was caused due to rash and negligent driving of the bus belonging to respondent No. 3 and also enhanced the compensation, there is no merit in them. But as said above as there is no appearance they are dismissed for 75 is allowed with costs and appeals No. 144 and 145/1975 are dismissed in default.