

Surinder Singh Oberoi vs Mahesh Kumar on 23 December, 2024

IN THE COURT OF MS. VRINDA KUMARI
PRESIDING OFFICER:MOTOR ACCIDENT CLAIMS
TRIBUNAL PATIALA HOUSE COURTS, NEW DELHI

IN THE MATTER OF:
SURINDER SINGH OBEROI VS. MAHESH KUMAR & ORS.
DAR No. 347/20

Sh. Surinder Singh Oberoi
S/o Sh. Surjit Singh Oberoi,
R/o H.No. 1760, B-1, Vasant Kunj,
Delhi.

.....Claimant/Injured

Versus

1. Sh. Mahesh Kumar
S/o Sh. Ram Ratan,
R/o Gali No. 14, Block E, Jagmal Enclave,
Roshan Nagar, Amar Nagar, Faridabad.

(Driver)

2. Sh. Manish Kumar Bhati
S/o Sh. Kendra Singh,
R/o 13C, Prem Vihar, Khoda Colony,
Ghaziabad, U.P.

(Owner)

3. Liberty General Insurance Co. Ltd.
Netaji Subhash Place, Delhi.

(Insurer)

.....Respondents

Date of filing of DAR	:	24.12.2020
Date of framing of issues	:	22.05.2023
Date of concluding arguments	:	05.12.2024
Date of decision	:	23.12.2024

AWARD/JUDGMENT

1. The present Detailed Accident Report (DAR) for compensation relates to grievous injury and permanent disability suffered by the claimant Sh. Surinder Singh Oberoi in a road accident that took place on 07.06.2020 at about 06:30 PM, at Rajpath Rafi Marg Crossing, New Delhi, regarding which one FIR No.71/20, U/s 279/338 IPC & 3/181, 5/180 MV Act was registered at PS Parliament Street. The vehicle involved in this case is a Maruti Ertiga white coloured car bearing registration No. UP-14CM-8258, which at the relevant time of accident was being driven by respondent no.1 (R1) Sh. Mahesh Kumar, owned by respondent no. 2 (R2) Sh. Manish Kumar and insured with respondent no. 3 (R3) Liberty General Insurance Co. Ltd.

2. It is the case of the claimant that on 07.06.2020, the claimant was going towards India Gate by his Scott-10 cycle from the side of Rashtra Pati Bhawan via Rajpath. When he was crossing Rajpath

Rafi Marg and the traffic signal was green, all of a sudden, the offending vehicle bearing registration No. UP-14CM-8258, which was being driven by respondent no. 1 at a high speed and in a rash and negligent manner, came from Udyog Bhawan side and jumped the red traffic signal and hit him with great force due to which he sustained grievous injuries. Claimant was removed to Indian Spinal Injuries Centre, Vasant Kunj, New Delhi, where his MLC was prepared.

3. Respondent no. 1 filed his reply to the DAR wherein it is submitted that the FIR was lodged on 18.06.2020 whereas the accident took place on 07.06.2020. It is further submitted that he was not doing any job as he shifted to his native village in the year 2017 due to which he could not get his driving license renewed in time. It is further submitted that he had got issued a fresh driving license from Haryana on 12.01.2021. It is further submitted that the accident took place due to fault on the part of claimant. It is further submitted that there was defective investigation in this case and the FIR was registered on the basis of an afterthought by the claimant.

4. Respondent no. 2 has not filed his reply to the DAR despite opportunity being given. It is pertinent to mention that he was proceeded against ex-parte vide Order dated 22.05.2023.

5. Respondent no. 3/Insurance Company filed its written statement to the DAR wherein it is submitted that the respondent no.1 was not holding a valid and effective driving license on the date of accident and hence, they are not liable to pay compensation to the claimant. It is further submitted that the alleged offending vehicle was duly insured with them in the name of respondent no. 2 w.e.f. 03.02.2020 to 02.02.2021 subject to terms and conditions of the insurance policy.

6. On 22.05.2023, the following issues were framed by this tribunal as:-

1. Whether the claimant Sh. Surinder Singh Oberoi sustained grievous injuries in the accident which occurred on 07.06.2020 at about 06:30 PM, at Rajpath Rafi Marg Crossing, New Delhi caused by rash and negligent driving of vehicle No. UP-14CM-8258 driven by respondent no. 1, owned by respondent no.2 and insured with respondent no. 3? OPP.

2. Whether the claimant is entitled for compensation? If so, to what amount and from whom? OPP.

3. Relief.

7. In support of his claim, the claimant examined himself as PW1. His evidence by way of affidavit is Ex. PW1/A. He relied upon certain documents. Photocopy of his Aadhaar card, PAN card, academic documents and sport certificate (International Marathon) as Ex. PW1/1 (colly) (OSR). Copy of his salary slip as Ex. PW1/2. Copy of his Form 16 is Ex. PW1/3 (colly) (OSR). Copy of his treatment record and discharge summary are Ex. PW1/4 (colly) (OSR). DAR filed by the IO is Ex. PW1/5 (colly). His original disability certificate is Ex. PW1/6.

8. The claimant examined Sh. Rajeev Ranjan, Nodal Officer from TATA Teleservices Ltd. as PW2 who has placed on record employment, salary and leave record of claimant.

9. The claimant examined Dr. Ritabh Kumar, Consultant Ortho from Indian Spinal Injuries Centre, Vasant Kunj, New Delhi as PW3 who has brought the medical record along with MLC of claimant.

10. Respondent no. 1 has examined himself as RW1. His affidavit in evidence is Ex. RW1/A. He relied upon copy of his driving license issued on 12.01.2021 as Ex.RW1/A.

11. The Tribunal heard the arguments advanced by Sh. Dheeraj Singh, Ld. Counsel for claimant, Sh. B.S. Randhawa, Ld. Counsel for R-1/driver and Sh. Nitesh Gupta, Ld. Counsel for R-3/Insurance Company and has carefully perused the entire case record. The findings on the aforementioned issues are rendered hereinafter in the succeeding paragraphs.

1. Whether the claimant Sh. Surinder Singh Oberoi sustained grievous injuries in the accident which occurred on 07.06.2020 at about 06:30 PM, at Rajpath Rafi Marg Crossing, New Delhi caused by rash and negligent driving of vehicle No. UP-14CM-8258 driven by respondent no. 1, owned by respondent no.2 and insured with respondent no. 3? OPP.

13. Onus to prove this issue was upon the claimant. The first question that needs to be decided is whether the accident was caused by the vehicle bearing registration No. UP-14CM-8258.

14. In order to prove the same, the claimant has examined himself as PW1. In his evidence by way of affidavit Ex. PW1/A, he narrated the manner of accident as follows :-

"3. That on dated 07/06/2020, the petitioner was going towards India Gate by his scott-10 cycle from the side of Rashtra Pati Bhawan via Rajpath with due care and precautions. When the petitioner at about 06:30 P.M. was crossing the Rajpath Rafi Marg and on the crossing the traffic signal was green for my side, suddenly, a vehicle (car) bearing registration No. UP-14CM-8258 make Maruti Ertiga colour white came from Udyog Bhawan side, who's driver driving the said vehicle in a very high speed and in a rash and negligent manner jumped the traffic signal (red signal) and hit the petitioner with a violent force".

15. During his cross examination, PW1 deposed that the offending vehicle was coming from his right hand side and hit him from right side only due to which he was tossed 8 feet in the air and then fell on his left side. He further deposed that after the said accident, the police official from nearby police chowki apprehended the driver of offending vehicle. He further deposed that no FIR was lodged in the police station on the date of accident. He further deposed that he had called the police to his house for lodging complaint Ex. PW1/D1 on 18.06.2020.

16. During the course of final arguments, the Insurance Company did not dispute the assertion of the claimant regarding the manner in which the accident took place.

17. The defence of R-1 as has emerged from the cross examination of PW1 as also the affidavit in evidence of RW1 (Ex.RW1/A) is that while riding his cycle (speedster with four gears) from the side of Rashtrapati Bhawan, PW1/claimant was coming at a very high speed and dashed against the rear door of the offending vehicle which was plying on Rafi Marg coming from Udyog Bhawan. Further, the head of the claimant was down and he was trying to cross Rafi Marg Crossing while signal light of his side was red and not green.

18. I shall now refer to the mechanical inspection report of the cycle. As per it, there is no damage to the handle or brake of the cycle but it did suffer damage/scratches to its right side. Interestingly, the offending vehicle suffered dents on the left side rear door and rear dickie/door. The front bumper at the right side corner was also found scratched. There is no explanation as to how the offending car suffered damage on almost all its sides.

19. As per the chargesheet, the accident in question took place because of rash and negligent driving of offending vehicle bearing registration no. UP-14CM-8258 by R1. The DAR Part VIII specifically mentions that the offending vehicle was being driven by R-1, without valid driving license, aggressively by jumping red light and crossing the speed limit.

20. Reliance is being placed upon the judgment of Hon'ble Delhi High Court in case Bajaj Allianz General Insurance Co. Ltd. Vs. Meera Devi & ors., 2021 LawSuit (Del) 2021 wherein it was held that ".....in view of Delhi Motor Accident Claim Tribunal Rules, 2008, contents of DAR has to be presumed to be correct and read in evidence without formal proof of the same unless proof to the contrary was produced."

21. The Hon'ble Apex Court in Mangla Ram Vs. Oriental Insurance Co. Ltd. & Ors., 2018 Law Suit (SC) 303 has observed that filing of charge sheet against the driver prima facie points towards his complicity in driving the vehicle rashly and negligently. It has been further observed that even when the accused were to be acquitted in the criminal case, the same may be of no effect on the assessment of the liability required in respect of motor accident cases by the Tribunal.

22. It is well settled that the procedure followed for proceedings conducted by an accident tribunal is similar to that followed by a Civil Court and in Civil matters, the facts are required to be established on preponderance of probabilities and not beyond reasonable doubt, as are required in a criminal prosecution. Reference in this regard is made to the judgment of Hon'ble Apex Court reported as (2009) 13 SC 530 in Bimla Devi and others Vs. Himachal Road Transport Corporation and others, wherein it has been observed that strict proof of an accident caused by a particular vehicle in a particular manner may not be possible to be done by the claimants and the claimants were merely to establish their case on the touchstone of preponderance of probability.

23. In view of foregoing discussion, it stands proved on preponderance of probability that the aforesaid accident took place due to rash and negligent driving of the offending vehicle bearing registration no. UP-14CM-8258 and the said vehicle at that time was driven by respondent no. 1, owned by respondent no. 2 and insured with respondent no.3. Hence, this issue is decided in favour of the claimant and against the respondents.

24. ISSUE NO.2

2. Whether the claimant is entitled for compensation? If so, to what amount and from whom?

25. As the issue No.1 has been proved in favour of the claimant, he has become entitled to be compensated for the injuries suffered by him in the accident, but the computation of compensation and liability to pay the same are required to be decided.

26. In terms of Section 168 of the Motor Vehicle Act, 1988, the compensation which is to be awarded by this Tribunal is required to be 'just'. In injury cases, a claimant is entitled to two different kinds of compensation i.e. pecuniary as well as non- pecuniary damages. The Hon'ble Apex Court in Raj Kumar Vs. Ajay Kumar reported in (2011) 1 SCC 343, has laid down heads under which compensation is awarded in personal injury cases as:-

Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

27. Having considered the ratio of aforesaid judgment, the compensation payable to claimant is assessed hereinafter under the following heads as:-

(i) Medical or Treatment Expenses

28. Claimant in his affidavit Ex. PW1/A has tendered on record his treatment record and discharge summary as Ex. PW1/4 (colly), as per which the claimant was admitted in Indian Spinal Injuries Centre on 07.06.2020 and was discharged on 11.06.2020 where he was diagnosed with fracture

neck of femur left garden IV and had undergone operative procedures. The claimant was again admitted in the said hospital on 07.06.2022 for removal of implant and was discharged on 10.06.2022.

29. The claimant in his affidavit has not tendered his original medical bills. However, at the stage of final arguments, he has placed certain original medical receipts issued by Vaidyagrama, Coimbatore to show that he has taken Ayurvedic treatment from Coimbatore. These receipts pertain to the months of November and December, 2023. The discharge summary issued by Vaidyagrama Ayurveda Healing Village shows that the claimant still suffers pain in the left hip which needs timely management. Testimony of PW3 also shows that he had been treating the injured for last three years. The original bills issues by Vaidyagrama shall, therefore, be considered. So far as medical report dated 07.11.2024 is concerned, the claimant has filed it to show that his disability is getting worse and the Avascular Necrosis of left femoral head is of stage II now. No doctor was examined to prove this condition or its implications. This document, therefore, can not be relied upon.

30. Accordingly, the claimant is held entitled to an amount of Rs.1,17,831/- under this head.

(ii) Loss of earnings

31. The claimant in his affidavit Ex. PW1/A has claimed that he was working in a private company namely TATA Teleservices Ltd., Gurgaon and Noida as Senior Manager and earning about Rs.1,77,265/- per month.

32. In order to prove the same, the claimant examined Sh. Rajeev Ranjan, Nodal Officer from TATA Teleservices Ltd. as PW2 who deposed that the claimant was working as Senior Manager and was getting salary of Rs.1,77,265/- per month, as per pay slip placed on record. He has also placed on record attested copy of Annual Compensation Review-2021 which remains the same for the said year.

33. Perusal of attested copy of salary slip of claimant for the month of June, 2020 reflects that he was getting salary of Rs.1,77,265/- per month and the income tax to the tune of Rs.24,126/- was deducted. After deducting the tax amount, the monthly salary of claimant comes out to be Rs.1,53,139/- (Rs.1,77,265/- - Rs.24,126/-).

34. Ld. Counsel for Insurance Company has pointed out that PW2, in his examination in chief, has deposed that the claimant stayed on leave from 07.06.2020 to 26.06.2020. Further, discharge summary shows that the claimant underwent surgery for removal of left hip implant and he remained hospitalized from 07.06.2022 to 10.06.2022. In these circumstances, the Tribunal is convinced that the claimant must have been on bed rest for atleast 30 days which includes the period of his admission in the hospital in June, 2022. Therefore, he is being awarded an amount of Rs.1,53,139/- (salary of one month) under this head.

(iii) Loss of future earnings

35. As per disability certificate issued by Dr. RML Hospital, the claimant is the case of fracture neck femur (left) operated and his permanent physical disability is 9% in relation to left lower limb.

36. The law with regard to grant of compensation due to permanent disability and determination of functional disability etc. was well settled by the Hon'ble Supreme Court in the case of Raj Kumar Vs. Ajay Kumar & Anr., (2011) 1 SCC 343, wherein it has been held as under :-

"4. The provision of the Motor Vehicles Act, 1988 ('Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. (See C. K. Subramonia Iyer vs. T. Kunhikuttan Nair - AIR 1970 SC 376, R. D. Hattangadi vs. Pest Control (India) Ltd. - 1995 (1) SCC 551 and Baker vs. Willoughby - 1970 AC 467).

10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the

head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may....."

37. In order to prove the same, the claimant has examined Dr. Ritabh Kumar, Consultant Ortho from Indian Spinal Injuries Centre, Vasant Kunj, New Delhi as PW₃ whose testimony reads as follows :-

"I am a summoned witness. I have brought the complete record relating the claimant along with MLC. I am the treating doctor of the claimant from the period, i.e. 07.06.2020 to 11.06.2020, as per the discharge summary. That the nature of injury is grievous to the left hip, he had fracture neck femur grade 4/4 type 3 on 3, he underwent surgery. He may face some challenges in running. He will need regular follow up for long term. I cannot say today whether the claimant will be requiring hip surgery in future or not. As given the grievous nature of injury the chance of complication of injuries are as high as 30% for which he may need another surgery in future. The cost of the said surgery is variable in nature depending upon location of hospital chosen by the patient. The government hospital may do it for free also and the private may charge any amount. I have no idea about the cost of surgery in future or in my hospital. He has some problem as on date as I am a treating doctor for last 3 years of the claimant. XXXX by Sh. Nitesh Gupta, Ld. Counsel for the Insurance.

It is wrong to suggest that the claimant has no problem in running or moving. It is correct that there is no problem in daily routine activities but running is affected at the present. It is correct that hip surgery may not be required in future and only time can tell. It is correct that the condition of the claimant has improved from the date of surgery till date and he has started running now. XXXXXX by Sh. B.S. Randhawa, Ld. Counsel for R-1. Nil opportunity."

38. The testimony of PW₃ shows that even though the claimant has started running, this skill of his has got affected. Claimant/PW₁ has deposed in his affidavit in evidence Ex. PW₁/A that he worked as Senior Manager in a private company. It is noted that the claimant has a sitting job.

39. PW2 has testified that as per company policy, yearly increment has to be given to the employees on the basis of performance. In his cross examination, he has deposed that the annual compensation of the claimant remained same for the year 2021. It implies that the annual increment was not granted to the claimant after the accident. The Tribunal has no hesitation in holding that the injuries suffered in the accident in question affected the work performance of injured. Further, the Tribunal does not find any ground to doubt the contention of the claimant that the injuries have reduced quality of life as he can no more run marathons or go for bicycle rides. It is noted that the discharge summary of Vaidyagrama Ayurveda Healing Village were filed at the time of final arguments along with certain bills. It is apparent from these documents that the injured still suffers pain in left hip region on account of long sittings for which he needs to take therapies from time to time. However, these factors do not indicate that the functional disability of claimant is 100%.

40. Considering the legal position discussed above coupled with the testimony of above witnesses, the functional disability of claimant is, therefore, taken as 5% in relation to whole body.

41. To apply the multiplier, it is necessary to ascertain the age of the claimant. The claimant has tendered on record copy of his Aadhaar card as Ex. PW1/1 (OSR). In Aadhaar card, the date of birth of claimant is found recorded as 22.10.1980. Hence, going by this document, the age of claimant comes out to be around 39 years, 7 months and 16 days at the time of accident. Therefore, in view of the law laid down by the Hon'ble Supreme Court in case of Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr., (2009) 6 SCC 121, which has also been upheld by the Constitution Bench of the Hon'ble Apex Court in a judgment of National Insurance Company Ltd. Vs. Pranay Sethi & Ors., SLP (Civil) No. 25590 of 2014 dated 31.10.2017, the multiplier of '15' is applicable for calculating the loss of future earnings of the claimant arising out of above disability.

42. Further, the claimant is also held entitled to 50% future prospects in view of the law laid down by the Hon'ble Apex Court in Pranay Sethi & Ors.(Supra) as the claimant was permanent employee of the Company. Thus, the loss of future earnings caused to the claimant due to his permanent disability comes to Rs.20,67,377/- (Rs.1,53,139/- X 12 X 5/100 X 15 X 150/100).

(iv) Mental and Physical Shock, Pain and Sufferings & Loss of Amenities

43. As stated above, the claimant had suffered grievous injuries and permanent disability in the accident. Though, it is not possible to exactly compensate him for the shock, pain and sufferings etc. which he had actually suffered because of the above injuries, but an effort has to be made to compensate him for the same in a just and reasonable manner. Hence, keeping in view the extent and nature of the injuries suffered by the claimant and duration of the treatment taken by him etc., an amount of Rs.50,000/- each is being awarded to him towards (i) mental and physical shock and (ii) for pain and sufferings respectively. Further, an amount of Rs.25,000/- is also awarded to him towards the loss of amenities suffered by him during said period of his treatment.

Thus, he is awarded total amount of Rs.1,25,000/- under this head.

(v) Conveyance, Special Diet and Attendant Charges

44. The claimant in his affidavit has claimed that he had spent an amount of Rs.10,00,000/- on treatment and transportation, special/rich diet etc. However, he has not specified the amount spent towards conveyance and special diet and has also not placed on record any document in order to substantiate his above claim. Still this Tribunal can very well take note of the requirement of conveyance for claimant for frequently visiting the hospitals and doctors in connection with his treatment and special diet for his early recovery from the injuries suffered because of the accident. Considering the facts and circumstances of the present case, an amount of Rs.20,000/- is being awarded to the claimant towards conveyance and Rs.30,000/- towards special diet.

45. The claimant in his affidavit has claimed that he had hired an attendant for assistance to do his daily routine works on monthly salary of Rs.20,000/- for six months. However, he has not placed on record in order to substantiate his above claim. Keeping in view the nature of injuries and disability suffered by the claimant, he would have required assistance of some family member/attendant for doing his daily routine work for atleast six months, therefore, a sum of Rs.10,000/- per month for six months is also being awarded to the claimant towards attendant charges. The claimant is thus entitled to an amount of Rs.1,10,000/- (Rs.20,000/- + Rs. 30,000/- + Rs. 10,000/- X 6 months) under this head.

ISSUE No. 3/Relief

46. In view of foregoing discussion, the claimant is thus awarded a sum of Rs.25,73,347/- (Rupees Twenty Five Thousand Seventy Three Thousand Three Hundred Forty Seven only) (Rs.1,17,831/- + Rs.1,53,139/- + Rs.20,67,377/- + Rs.1,25,000/- + Rs.1,10,000/-) along with 7.5% interest from the date of filing of DAR. However, it is directed that the amount of interim award and interest for the suspended period, if any, during the course of this inquiry, shall be liable to be excluded from the award amount.

RELEASE

47. Out of the awarded amount, 90% amount is directed to be kept with UCO Bank, Patiala House Court, New Delhi in the Motor Accident Claims Annuity Deposit (MACAD) in form of 150 monthly fixed deposit receipts (FDRs) of equal amounts for a period of 1 to 150 months in succession, as per scheme formulated by the Hon'ble Delhi High Court vide order dated 01.05.2018 in FAO No. 842/2003, titled as Rajesh Tyagi & Ors. Vs. Jaibir Singh & Ors. and as implemented vide subsequent order dated 07.12.2018 and order dated 08.01.2021 passed in the said case. The amount of FDRs on maturity would be released in his saving/MACT Claims SB Account opened/to be opened near the place of his residence, as directed vide separate Order passed today and the remaining 10% amount is also directed to be released into his above said account, which can be withdrawn through withdrawal form and utilized by him.

48. The disbursement to the claimant is, however, subject to addition of future interest till deposit proportionately and also deduction of proportionate tax on the interest amount or amount of interim award, if any, to/from his share.

49. The bank shall not permit any joint names to be added in the savings bank account or MACAD scheme account of claimant i.e. the bank account of claimant shall be individual account and not a joint account.

50. The original fixed deposits shall be retained by the UCO Bank, PHC, New Delhi in safe custody. However, the statement containing FDR numbers, amounts, dates of maturity and maturity amounts shall be furnished by the said bank to the claimant and the above amount shall be released in account of claimant by the Manager, UCO Bank, PHC, ND through RTGS/NEFT/or any other electronic mode.

51. The monthly interest be credited by Electronic Clearing System (ECS) in the saving bank account of the claimant near the place of his residence.

52. The maturity amount of the FDR (s) on monthly basis net of TDS be credited by Electronic Clearing System (ECS) in the above account of claimant.

53. No loan, advance or withdrawal or pre-mature discharge be allowed on the MACAD without permission of the Court.

54. The concerned bank shall not issue any cheque book and/or debit card to claimant(s). However, in case the debit card and/or cheque book have already been issued, bank shall cancel the same before the disbursement of the award amount. The bank shall debit card(s) freeze the account of the claimant(s) so that no debit card be issued in respect of the account of the claimant(s) from any other branch of the bank.

55. The bank shall make an endorsement on the passbook of the claimant(s) to the effect that no cheque book and/or debit card have been issued and shall not be issued without the permission of the Court and claimant(s) shall produce the passbook with the necessary endorsement before the Court on the next date fixed for compliance.

56. It is clarified that the endorsement made by the bank along with the duly signed and stamped by the bank official on the passbook(s) of the claimant(s) is sufficient compliance of clause above.

LIABILITY

57. During the course of final arguments, it was submitted by Ld. Counsel for Insurance Company that R-1 was not only the driver but also the owner of the offending vehicle. This contention was not disputed by R-1 during the course of final arguments. The registered owner of the offending vehicle, however, is Sh. Manish Kumar (R-2). There is nothing to show that R-1 was employee of R-2 or R-2 was aware that R-1 did not have a valid driving license at the relevant time.

58. In these circumstances, the Tribunal is not inclined to grant recovery rights in favour of Insurance Company in the present matter.

59. All the respondents are though being held jointly and severally liable to pay the awarded amount of compensation to petitioners, but respondent no.3 being insurer of offending vehicle, is directed to deposit the award amount with UCO Bank, Patiala House Court Branch, along with interest @ 7.5% per annum from the date of filing of DAR by RTGS/NEFT/IMPS in bank account being maintained in the above said bank in name of this tribunal within 30 days from today, failing which it is liable to pay interest at the rate of 9% per annum for the period of delay. In case even after lapse of 90 days from today, respondent no. 3 fails to deposit this compensation with interest, in that event, in light of judgment of the Hon'ble High Court of Delhi passed in the case of New India Assurance Company Limited Vs. Kashmiri Lal 2007 ACJ 688 , this compensation shall be recovered by attaching the bank account of respondent no. 3 with a cost of Rs.5,000/-.

60. The respondent no. 3 shall inform the claimant and his counsel through registered post that the awarded amount has been deposited so as to facilitate him to collect the same.

61. A copy of this award be given to the parties free of cost or be sent to them by email. Ahlmad is directed to send a copy of the award to Ld. Metropolitan Magistrate concerned and Delhi Legal Services Authority in view of Judgment titled as Rajesh Tyagi Vs. Jaibir Singh & Ors. passed in FAO No.842/2003 dated 12.12.2014.

62. Further, Nazir is directed to maintain the record in Form XVIII as per the directions given by the Hon'ble Delhi High Court in the above case on 08.01.2021.

63. The particulars of Form-XVII of the Modified Claims Tribunal Agreed Procedure, in terms of directions given by the Hon'ble Delhi High Court in the above case on 08.01.2021, are as under:

1. Date of the accident 07.06.2020
2. Date of filing of Form I- First NA Accident Report (FAR)
3. Date of delivery of Form-II to the NA victim(s)
4. Date of receipt of Form-III from the NA Driver
5. Date of receipt of Form-IV from NA the owner
6. Date of filing of the Form-V- NA Interim Accident Report (IAR)
7. Date of receipt of Form-VIA and NA Form VIB from the Victim (s)
8. Date of filing of Form-VII-Detailed 24.12.2020 Accident Report (DAR)
9. Whether there was any delay or No deficiency on the part of the Investigating Officer? If so, whether any action/direction warranted?

10. Date of appointment of the Not given Designated Officer by the Insurance Company.

11. Whether the Designated Officer of No the Insurance Company submitted his report within 30 days of the DAR?

12. Whether there was any delay or No deficiencies on the part of the Designated Officer of the Insurance Company? If so, whether any action/direction warranted?

13. Date of response of the claimant(s) Legal offer not filed.

of the offer of the Insurance Company.

14. Date of the Award 23.12.2024

15. Whether the claimant(s) were Yes directed to open savings bank account(s) near their place of residence?

16. Date of order by which claimant(s) 23.11.2024 were directed to open savings bank account(s) near his place of residence and produce PAN Card and Adhaar Card and the direction to the bank not issue any cheque book/debit card to the claimant (s) and make an endorsement to this effect on the passbook(s).

17. Date on which the claimant(s) Yet to furnish produced the passbook of their savings bank account near the place of their residence along with the endorsement, PAN Card and Adhaar Card?

18. Permanent Residential Address of As mentioned above the claimant(s)

19. Whether the claimant(s) savings Yet to furnish bank account(s) is near his place of residence?

20. Whether the claimant(s) were Yes examined at the time of passing of the award to ascertain his/their financial condition?

64. File be consigned to record room after completion of necessary formalities. Separate file be prepared for compliance report and be put up on 26.03.2025. Digitally signed by VRINDA VRINDA KUMARI KUMARI Date:

2024.12.23 16:22:11 +0530 Announced in the open court. (Vrinda Kumari) on 23.12.2024 PO/MACT, New Delhi Encl: The summary of computation in the prescribed format SUMMARY OF THE COMPUTATION OF AWARD IN INJURY CASES IN FORM XVI

1. Date of accident : 07.06.2020

2. Name of the injured : Sh. Surinder Singh Oberoi
3. Age of the injured : 39 years,7 months and 16 days
4. Occupation of the injured : Private job
5. Income of the injured : Rs.1,53,139/- per month
6. Nature of injury : Grievous
7. Medical treatment taken by : Indian Spinal Injuries the injured Centre
8. Period of hospitalization : 07.06.2020 to 11.06.2020 07.06.2022 to 10.06.2022
9. Whether any permanent : 9% permanent disability disability? and functional disability taken as 5%.
10. Computation of Compensation Sr.No. Heads

11. Pecuniary Loss

(i) Expenditure on treatment : Rs.1,17,831/-

(ii) Expenditure on conveyance : Rs.20,000/-

(iii) Expenditure on special diet : Rs.30,000/-

(iv) Cost of nursing/attendant : Rs.60,000/-

- (v) Loss of earning capacity : Nil
(vi) Loss of Income : Rs.1,53,139/-
(vii) Any other loss which may : Nil
require any special
treatment or aid to the

- injured for the rest of his life
12. Non-pecuniary Loss:
- (i) Compensation for mental : Rs.50,000/-
and physical shock
- (ii) Pain and suffering : Rs.50,000/-
- (iii) Loss of amenities of life : Rs.25,000/-
- (iv) Disfiguration : Nil
- (v) Loss of marriage prospects : Nil
- (vi) Loss of earning, : Nil
inconvenience, hardships,
disappointment,frustration,

- mental stress, dejection
and unhappiness in future
life etc.
13. Disability resulting in
loss of earning capacity
- (i) Percentage of disability : 9% permanent disability
assessed and nature of
disability as permanent or
temporary
- (ii) Loss of amenities or loss of : Nil
expectation of life span on
account of disability.
- (iii) Percentage of loss of : 5% functional disability
earning relation to disability
- (iv) Loss of future income : Rs.20,67,377/-
14. Total Compensation Rs.25,73,347/-
15. Interest Awarded : 7.5% p.a. from date of
filing of DAR till the
date of award to be
deposited in 30 days
and 9% thereafter.
16. Interest amount up to the : Rs.7,71,468/-

date of award

17. Total amount including : Rs.33,44,815/- (rounded interest off to Rs.33,45,000/-)

18. Award amount released : 10% share

19. Award amount kept in the : 90% share FDRs/ Motor Accident Claims Annuity Deposit (MACAD)

20. Mode of disbursement of : Through Bank the award amount to the claimant (s)

21. Next date for compliance : 26.03.2025 of the award VRINDA KUMARI KUMARI Date:

2024.12.23 16:22:19 +0530 (Vrinda Kumari) PO/MACT, New Delhi 23.12.2024