

**REPORTABLE****IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NOS.11011-11012 OF 2017**

Vijay Kumar Rastogi

.... Appellant

Versus

Uttar Pradesh State Roadways  
Transport Corporation

....Respondent

**J U D G M E N T****A.M. Khanwilkar, J.**

1. The present appeals take exception to the judgment of the High Court of Delhi in MAC Appeal No.393/2009 dated 6<sup>th</sup> December, 2016, whereby the High Court declined to enhance the compensation amount awarded to the appellant by the Motor Accident Claims Tribunal and to the order dated 18<sup>th</sup> January, 2017 dismissing the Review Petition No.20 of 2017.

2. The Motor Accident Claims Tribunal (for short, “the Tribunal”) vide order dated 4<sup>th</sup> April, 2009, awarded compensation to the appellant and his father-in-law to the tune of Rs.5,59,584/- and Rs.4,53,131/-, respectively, against which four appeals were filed before the High Court, one each by the appellant and his father-in-law and two cross appeals by the respondent, all of which were disposed of by the impugned judgment. The appellant alone has assailed the impugned judgment and prays for grant of enhanced compensation amount.

3. As can be gleaned from the claim petition, the appellant and his father-in-law suffered serious injuries on 26<sup>th</sup> January, 2005, when their car was hit by bus no. UP-25-G-9132, owned by the respondent and being rashly and negligently driven by one Alam Beg. The extent of the injuries caused to the appellant included haemorrhage, multiple cuts, bruises and fractures all over the body and post traumatic optic neuropathy. The appellant was treated at several hospitals and operated upon but suffered disability of 25%. He

then filed a claim petition in the Tribunal, Karkardooma, Delhi, against the driver of bus no. UP-25-G-9132, Alam Beg, and the respondent on 27<sup>th</sup> January, 2006.

4. Ultimately, the Tribunal, vide order dated 4<sup>th</sup> April, 2009, inter alia held that bus No. UP-25-G-9132 was rashly and negligently driven by the driver, Alam Beg, and accordingly, awarded the appellant with compensation of Rs.5,59,584/- along with interest at 7% p.a. under the following heads:

*“23. Keeping in view all the relevant factors, principles of law laid down in above mentioned cases and evidence on record, I am of the view that the petitioner is entitled for compensation as per following details:*

1.	Cost of medicines	:Rs.1,08,883.00
2.	Cost of future treatment	:Rs. 25,000.00
3.	Loss of Income	:Rs. 40,802.00
4.	Loss of future income	:Rs.1,78,044.00
5.	Loss of income for 15 days	:Rs. 1,854.62
6.	Loss of enjoyment of life & Limb etc.	:Rs.1,00,000.00
7.	Pain and Sufferings	:Rs. 50,000.00
8.	Compensation for attendant	:Rs. 20,000.00
9.	Special Diet	:Rs. 20,000.00
10.	Conveyance	<u>:Rs. 15,000.00</u>
	Total	:Rs.5,59,583.62

*or say :Rs.5,59,584.00”*

5. Be it noted that the Tribunal in paragraph 17 of its judgment has adverted to Ext. PW-6/F, which reveals the date of birth of the appellant as 7-11-1969 and on that basis, has recorded a finding that on the date of accident on 26<sup>th</sup> June, 2005, the appellant was 36 years of age. Further, the Tribunal in paragraph 16 of its judgment has taken note of the fact that the appellant on the date of accident was working as Medical Representative with M/s. Stadmed Private Ltd., and after the accident he could not perform his duty because he remained confined to bed.

6. The Tribunal, while recording that the appellant earned a sum of Rs.50,556/- from 'other sources' namely bank interest and commission, over and above his salary, did not consider the said income on the ground that commission and interest could not be considered for computation of loss of income. The appellant had annexed his income tax returns for the year 2004-05 as proof that his taxable income was considerably higher than the amount considered by the Tribunal, as given hereunder:

**"STATEMENT OF INCOME"**

NAME OF ASSESSEE	Vijay Kumar Rastogi
FATHER'S NAME	Sh. Nand Kishore Rastogi
DATE OF BIRTH	7 <sup>th</sup> Nov. 1969
ADDRESS	OFFICE
	Stadmed Private Limited
	138-B, Moahammed Pur,
	New Delhi – 110066
	RESIDENCE
	C-40, ZI, Dilshad Garden,
	Delhi – 110095
STATUS	: Individual
RESIDENTIAL STATUS	: Resident & Ordinarily
	Resident in India
PA NUMBER STATUS	: AEYPR8620R
PREVIOUS YEAR ENDED ON:	31 <sup>ST</sup> MARCH 2004
ASSESSMENT	: 2004-2005

**COMPUTATION OF TAXABLE INCOME**Income From Salary

Gross receipt from salary as per

Salary certificate 66,766.50

Less: Standard deduction u/s16(i) 22,225.50 44,511.00Income from Business or Profession

Income as per Income and

Expenditure Account 99,805.00

Less: Income not covered under the  
said head

Income from Salaries 66,766.50

Income from other sources 50,556.50

(17,518.00)

Income from other sources

Bank Interest 72.00

Commission 50,454.00 50,556.50

Gross Total income 77,549.50

<u>Less: Exemption U/S 80L</u>	
Bank interest	<u>72.00</u>
Gross Total income	<u>77,477.50</u>
Income Rounded off	77,480.00
Income Tax Due on Rs. 77480/-	4,496.00
<u>Less: Deduction U/s 88</u>	
EPF contribution	6,491.00
LIP Paid	<u>13,225.00</u>
	<u>19,716.00</u>

Amount allowed @ 20%	3,943.00
Tax Due	553.00
Tax Paid	<u>553.00</u>
Balance Payable/Receivable	NIL

(VIJAY KUMAR RASTOGI)”

7. Aggrieved by the Tribunal’s award, the appellant filed an appeal before the High Court, alleging that while passing the award, the Tribunal had erroneously calculated his income as Rs. 44,511/- per annum, disregarding his income from other sources and also reducing the actual income earned by the appellant by following the standard deduction method. In the impugned judgment, the High Court while recording that the appellant’s taxable income was Rs.77,480/- less tax paid of Rs.4496/-, and while accepting that the accident had been caused by the rash driving of the bus driver, Alam Beg and that the appellant had in no way contributed to the causing of

the accident, only enhanced the rate of interest on the compensation awarded from 7% to 9% as it felt that the rate of interest awarded was on the lower side but it did not enhance the compensation itself, on the ground that no case had been made out for enhancement. The appellant challenged the aforesaid judgment by way of a review petition, which was also dismissed.

8. The short point which arises for our consideration is: whether the High Court committed manifest error by not considering other sources of income of the appellant including compensation of Rs.80,000/- on account of damage to the Maruti car of the appellant while upholding the compensation awarded by the Tribunal?

9. We have heard Ms. Rekha Rastogi, learned counsel for the appellant as also Ms. Garima Prashad, learned counsel for the respondent.

10. The principal issue that needs to be addressed in these appeals is about the denial of claim in reference to commission and interest amounts earned by the appellant during the

relevant period, as disclosed in the Income Tax Return filed by the appellant. The appellant claimed income from other sources under two heads, namely, Bank Interest : Rs.72/-; and Commission : Rs.50,454/-. The Tribunal opined that commission and interest cannot be considered for computation of loss of income and confined the claim of the appellant only on the basis of his net annual salary income to Rs.44,511/-. The Tribunal noted that the appellant did not file any document of his age, educational qualification or profession. The High Court, on the other hand, in paragraph 11 of the impugned judgment observed thus:

*“11. Regarding the deduction of tax paid from the net income of injured – Vijay Kumar Rastogi is concerned, I find that the total income of injured – Vijay Kumar Rastogi as per the tax return (Ex.PW-6/F) is Rs.77477.50 and after deduction of tax of Rs.4,496/- the net income has been rightly taken into consideration by the learned Motor Accident Claims Tribunal. The disability of 25% suffered by injured Vijay Kumar Rastogi has been rightly taken to be the functional disability while keeping in view that the injured – Vijay Kumar Rastogi was working as the Medical Representative. No case for enhancement of compensation while taking the gross income of injured – Vijay Kumar Rastogi is made out, as net income has to*



*be taken into consideration while assessing the compensation in such cases. Regarding the application of multiplier of 15 is concerned, I do find that in case of injured Vijay Kumar Rastogi multiplier of 15 ought to have been adopted but by adoption of multiplier of 16, the difference in the compensation worked out is marginal and the same is set off by the fact that future prospects of injured Vijay Kumar Rastogi has not been taken into consideration and therefore, this Court is not inclined to interfere with the awarded compensation on this account.”*

11. Strikingly, the High Court noted the taxable income disclosed in tax return of the appellant for the relevant period as Rs.77,480/- (rounded off) and tax deduction of Rs.4,496/-, yet proceeded to hold that the net income of the appellant has been rightly taken into consideration by the Tribunal. It is unfathomable that the High Court, despite having accepted the claim of the appellant founded on his tax return for the relevant period, disclosing the taxable income of the appellant as Rs.77,480/- (rounded off) and deduction of tax of Rs.4,496/-, could have affirmed the conclusion of the Tribunal that the net annual income of the appellant was Rs.44,511/-. It ought to have reckoned the taxable income for computing

the head towards loss of income. This, in our opinion, is the manifest error committed by the High Court. The appellant is justified in relying upon the decisions of this Court which have taken the view that loss of taxable earning should be reckoned for the purpose of determining just compensation as enunciated in ***National Insurance Co. Ltd. Vs. Indira Srivastava and Ors.***<sup>1</sup>, which has been followed in ***Oriental Insurance Company Limited Vs. Jashuben and Ors.***<sup>2</sup>, and ***Kavita Vs. Deepak and Ors.***<sup>3</sup> It has been held that the “income” should include those benefits, either in terms of money or otherwise, which are taken into consideration for the purpose of payment of income tax or professional tax, although some elements thereof may or may not be taxable due to the exemption conferred thereupon under the statute.

12. The computation of taxable income as disclosed by the appellant in his tax return for the assessment year 2004-2005 for the previous year ended on 31<sup>st</sup> March, 2004, unambiguously reinforces the claim of the appellant that his

---

<sup>1</sup> (2008) 2 SCC 763

<sup>2</sup> (2008) 4 SCC 162

<sup>3</sup> (2012) 8 SCC 604

annual taxable income was Rs.77,480/- (rounded off) and income tax due thereon was Rs.4,496/-. After providing deduction of the income tax payable by the appellant, the amount towards the head 'loss of income' of the appellant would be Rs.72,984/- and not Rs.44,511/- as assumed by the Tribunal.

13. In other words, compensation under the head 'loss of income for 11 months' would be  $(Rs.72,984 \div 12) \times 11 = Rs.66,902$ . Similarly, towards the head 'loss of future income' computed by the Tribunal on the basis of disability suffered by the appellant to the extent of 25% in relation to his lower limb and keeping in mind that the age of appellant was only 36 years on the date of the accident and the exposition in the case of **Sayed Sadiq Vs. Divisional Manager United India Insurance Co. Ltd.**<sup>4</sup> (paragraphs 10 and 11), the appellant would be entitled to 40% of Rs.72,984 i.e. Rs.29,194 (rounded off) x 15 (multiplier), which comes to Rs.4,37,910. Thus, the appellant would be entitled to receive enhanced compensation

---

<sup>4</sup> 2014 (2) SCC 735

[Rs.66,902 - Rs.40,802 = **Rs.26,100** (Rupees twenty six thousand one hundred) and Rs.4,37,910 - Rs.1,78,044 = **Rs.2,59,866** (Rupees two lakh fifty nine thousand eight hundred and sixty six)] under these two heads, instead of Rs.40,802/- and Rs.1,78,044/- awarded by the Tribunal. In other words, the compensation amount towards these two heads would stand enhanced by **Rs.2,85,966/-** (Rupees two lakh eighty five thousand nine hundred and sixty six only) as indicated above, to which the appellant would be entitled along with interest at the rate of 9% (nine percent) per annum in terms of our decision.

14. The appellant has also claimed further compensation towards damage to his Maruti Car which, according to the appellant, was completely damaged, as mentioned in the Mechanical Inspection Report (Ext. PW-6/D) and the value of the car providing third party insurance (Ext.PW-6/E). On a careful scrutiny of the judgment of the Tribunal, we find that the Tribunal has not analysed this claim at all. That grievance was made by the appellant before the High Court, as noted in

paragraph 9 of the impugned judgment claiming compensation of Rs.80,000/- towards the same. The High Court in paragraph 13 of the impugned judgment, however, rejected the claim on the finding that the appellant had failed to invite its attention to any document indicating that the appellant had incurred the expenses of Rs.80,000/- towards car repair. Even in the present appeals, the appellant has failed to invite attention of this Court to any document on record in support of the said claim. Resultantly, we find no reason to interfere with the opinion expressed by the High Court on the issue under consideration.

15. A priori, the appellant would succeed in getting additional amount of **Rs.2,85,966/-** (Rupees two lakh eighty five thousand nine hundred and sixty six only) as enhanced compensation towards 'loss of income' and 'loss of future income', along with interest at the rate of 9% (nine percent) per annum thereon from the date of filing of the claim petition before the Tribunal till the date of realization.

16. The appeals are allowed to that limited extent in the above terms with no order as to costs.

.....CJI.  
**(Dipak Misra)**

.....J.  
**(A.M. Khanwilkar)**

.....J.  
**(Dr. D.Y. Chandrachud)**

**New Delhi;  
February 09, 2018.**