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VIJAY KUMAR RASTOGI

v.

UTTAR PRADESH STATE ROADWAYS TRANSPORT
CORPORATION

B

(Civil Appeal Nos. 11011-11012 of 2017)

FEBRUARY 09, 2018

**[DIPAK MISRA, CJI, A. M. KHANWILKAR AND
DR. D. Y. CHANDRACHUD, JJ.]**

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Motor Vehicles Act, 1988 – s.166 – Just compensation – Loss of taxable income – Consideration of, while determining compensation – Held: Income should include those benefits which are taken into consideration for payment of income tax – Tribunal erred in not considering income from other sources namely bank interest and commission over and above his salary as disclosed in the income tax return filed by claimant-appellant on the ground that commission and interest could not be considered for computation of loss of income.

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Allowing the appeals, the Court

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HELD: 1. The High Court noted the taxable income disclosed in tax return of the appellant for the relevant period as Rs.77,480/- 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/- 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 is the manifest error committed by the High Court. 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 31st March, 2004, unambiguously reinforces the claim of the appellant that his annual taxable income was Rs.77,480/- (rounded off) and income tax due

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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. [Paras 11, 12][626-H; 627-A-B, E] A

2. The appellant has also claimed further compensation towards damage to his Maruti Car which, according to the appellant, was completely damaged. The Tribunal did not analyse this claim at all. That grievance was made by the appellant before the High Court, claiming compensation of Rs.80,000/- towards the same. The High Court 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 these appeals, the appellant failed to invite attention of this Court to any document on record in support of the said claim. There is no reason to interfere with the opinion expressed by the High Court on the issue under consideration. [Para 14][628-C-F] B C D

Sayed Sadiq v. Divisional Manager United India Insurance Co. Ltd. (2014) 2 SCC 735 ; National Insurance Co. Ltd. v. Indira Srivastava and Ors. (2008) 2 SCC 763 : [2007] 13 SCR 352 ; Oriental Insurance Company Limited v. Jashuben and Ors. (2008) 4 SCC 162 : [2008] 2 SCR 930 ; Kavita v. Deepak and Ors. (2012) 8 SCC 604 – relied on. E

Case Law Reference

[2007] 13 SCR 352	relied on	Para 11	F
[2008] 2 SCR 930	relied on	Para 11	
(2012) 8 SCC 604	relied on	Para 11	
(2014) 2 SCC 735	relied on	Para 13	G

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 11011-11012 of 2017.

From the Judgment and Order dated 06.12.2016 of the High Court of Delhi at New Delhi in MAC Appeal No. 393 of 2009. H

A Ms. Rekha Rastogi, Pranab Kumar Mullick, Mrs. Soma Mullick,
Sebat Kumar Devria, Advs. for the Appellant.

Ms. Garima Prashad, Adv. for the Respondent.

The Judgment of the Court was delivered by

B **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 6th 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 18th January,
C 2017 dismissing the Review Petition No.20 of 2017.

2. The Motor Accident Claims Tribunal (for short, “the Tribunal”) vide order dated 4th 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, D 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.

E 3. As can be gleaned from the claim petition, the appellant and his father-in-law suffered serious injuries on 26th 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. F 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 27th January, 2006.

G 4. Ultimately, the Tribunal, vide order dated 4th 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:

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“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	A
2. Cost of future treatment	:Rs. 25,000.00	B
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	C
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	D
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 26th 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:

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A **“STATEMENT OF INCOME**

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

COMPUTATION OF TAXABLE INCOME

	<u><i>Income From Salary</i></u>	
	<i>Gross receipt from salary as per</i>	
E	<i>Salary certificate</i>	<i>66,766.50</i>
	<i>Less: Standard deduction u/s16(i)</i>	<i>22,225.50</i>
		<i>44,511.00</i>
	<u><i>Income from Business or Profession</i></u>	
	<i>Income as per Income and</i>	
F	<i>Expenditure Account</i>	<i>99,805.00</i>
	<i>Less: Income not covered under the</i>	
	<i>said head</i>	
	<i>Income from Salaries</i>	<i>66,766.50</i>
G	<i>Income from other sources</i>	<i>50,556.50</i>
		<i>(17,518.00)</i>
	<u><i>Income from other sources</i></u>	
	<i>Bank Interest</i>	<i>72.00</i>
	<i>Commission</i>	<i>50,454.00</i>
		<i>50,556.50</i>
	<i>Gross Total income</i>	<i>77,549.50</i>
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<i>Less: Exemption U/S 80L</i>		A
<i>Bank interest</i>	<u>72.00</u>	
<i>Gross Total income</i>	<u>77,477.50</u>	
<i>Income Rounded off</i>	77,480.00	
<i>Income Tax Due on Rs. 77480/-</i>	4,496.00	
<i>Less: Deduction U/s 88</i>		B
<i>EPF contribution</i>	6,491.00	
<i>LIP Paid</i>	<u>13,225.00</u>	
	<u>19,716.00</u>	
<i>Amount allowed @ 20%</i>	3,943.00	
<i>Tax Due</i>	553.00	C
<i>Tax Paid</i>	<u>553.00</u>	
<i>Balance Payable/Receivable</i>	NIL	
<i>(VIJAY KUMAR RASTOGI)"</i>		

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.

A 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 :
B 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
C 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
D 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
E 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
F 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,
G this Court is not inclined to interfere with the awarded
compensation on this account.”*

H 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.*¹, which has been followed in *Oriental Insurance Company Limited Vs. Jashuben and Ors.*², and *Kavita Vs. Deepak and Ors.*³ 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 31st March, 2004, unambiguously reinforces the claim of the appellant that his 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.*⁴ (paragraphs 10 and 11), the appellant would be entitled to 40%

¹ (2008) 2 SCC 763

² (2008) 4 SCC 162

³ (2012) 8 SCC 604

⁴ 2014 (2) SCC 735

- A 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 [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
- B 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.
- C 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,
- D 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
- E 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.
- F 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
- G 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.