IN THE COURT OF SH. VIVEK KUMAR GULIA
P.O : MOTOR ACCIDENT CLAIMS TRIBUNAL
EAST DISTRICT : KARKARDOOMA COURTS: DELHI

MACP No. 422/2016
Unique Case I.D. No. DLET01-18075-2015

Nand Lal (injured)
S/o late Sh. Ram Nohar
R/o 223, 'B' Block, Ambedkar Camp,
Jhilmil Industrial Area, New Delhi. ……..**Petitioner**

Versus

1. **Suraj Pal Singh** (Driver)
   S/o Sh. Sahab Singh
   R/o Village Belan Ganj, Imiliya, Firozabad, U.P.
2. **Frigorifico Allana Ltd.** (Regd. Owner)
   Office/ Factory : A-15, Site- IV, Indl. Area Sahibabab,
   Ghaziabad, U.P.
3. **The Oriental Insurance Co. Ltd** (Insurer)
   A-25/27, Asaf Ali Road, New Delhi. ……**Respondents**

Date of institution	: 21.05.2015
Final arguments heard	: 14.10.2020
Date of Award	: 21.10.2020

A W A R D

1. By this award, claim petition under section 166 & 140 of Motor Vehicles Act, 1988, based on detailed accident report

(DAR), would be decided.

2. The important facts of the case are as under. Petitioner Nand Lal suffered grievous injuries on account of a motor vehicular accident happened on 12.03.2014 at 03:00 p.m., at Ghazipur Landfill, Ghazipur, Delhi. In respect of this accident, FIR No.11/2015, u/s 279/337 IPC was registered at PS Ghazipur, Delhi. As per the FIR, on the aforesaid date, time and place, when the petitioner, a "Beldar" in MCD, was performing his duty of getting the garbage vehicles unloaded there, all of a sudden a tractor-trolley bearing registration no. UP-14AZ-0662 (in short "offending vehicle"), filled with garbage, being driven by respondent no.1 at a high speed and in rash and negligent manner on the uneven surface, came from behind and toppled, due to which his both legs came under trolley and got injured. After investigation, respondent no.1 was chargesheeted in the said criminal case for causing accident.

3. On service of notice of the petition, all the respondents marked appearance.

3.1 Respondent no.1 and 2 filed separate written statement taking common plea. They mentioned that the accident happened due to uneven surface as the tractor-trolley toppled and petitioner got injured and respondent no.1 was not driving it in rash and negligent manner. It is also mentioned by

them that respondent no.2 company incurred enormous expenditure in the treatment of petitioner as well as for other necessary supplies such as medicines, food, etc.

3.2 Respondent no.3/ insurer in its written statement took the statutory defence that insurance policy of the tractor-trolley covered the offending vehicle only for agricultural and forestry purposes whereas it was being used for transporting goods/ garbage from Murga Mandi, Ghazipur to Landfill, Ghazipur. It is also mentioned that respondent no.1 was not holding valid driving license to drive the tractor.

4. On the basis of pleadings, following issues were framed on 01.07.2015 :-

(i) Whether petitioner has suffered injuries in road side accident on 12.03.2014 involving vehicle i.e. tractor trolley bearing registration no. UP-14AZ-0662 being driven allegedly in a rash and negligent manner by R1?

(ii) To what amount of compensation, if any, the petitioner is entitled to and from whom?

(iii) Relief.

Later on, the following additional issues were framed on 13.11.2017 :-

(iv) Whether the tractor bearing registration no. UP14AZ-0662 was insured for agricultural purposes only? (OPR3)

(v) Whether the tractor bearing registration no. UP14AZ-0662 was being used for carrying garbage at the time of the accident, if so, its effect? (OPR3)

(vi) Whether there was any breach of any term and condition of insurance policy, if so, its effect? (OPR3)

5. In order to prove his case, petitioner examined 5 witnesses.

5.1 PW1, Nand Lal (petitioner/ injured), on the strength of affidavit Ex.PW1/A, deposed regarding the manner of accident, medical treatment, his earnings and disability suffered by him on account of accident and relied upon the documents i.e. his aadhaar card Ex.PW1/1; office I.D. Card Ex.PW1/2; DAR Ex.PW1/3; Original Treatment Record Ex.PW1/4; Medical Bills amounting Rs.34,501/- Ex.PW1/5 and Discharge Summary Ex.PW1/6.

5.2 PW2, Sh. Chandan Singh, Asstt. Engineer, EDMC, produced the salary record of injured Ex.PW2/A and Ex.PW2/B.

5.3 PW3, Dr. Sumit Gupta, Consultant (Ortho), Kaushik Nursing Home, deposed that injured was operated by him on 18.03.2014 as he was diagnosed with fracture of both bone right leg and he remained hospitalized in their during treatment.

5.4 PW4 Sh. Inderpal, Bill Clerk, EDMC, Laxmi Nagar, Delhi, produced the leave applications along with medical

certificates Ex.PW4/A submitted by the injured with the employer on account of accident.

5.5 PW5, Dr. Brijesh Jain, Jr. Specialist (Ortho), LBS Hospital, Delhi, a member of the Medical Board, proved the disability certificate of injured Ex.PW5/A showing 21% permanent disability in relation to right lower limb.

6. Respondents' side examined total 5 witnesses.

6.1 Respondent No.1 examined himself in his defence as R1W1 and deposed on the lines of written statement.

6.2 Respondent No.2 examined his authorized representative Ashfaque Manzer, in its defence.

6.3.1. Respondent No.3/ insurer examined its Asstt. Manager Ms. Pallavee Thakral. She produced notice under Order 12 Rule 8 CPC sent by the insurer to driver and owner of offending vehicle, Ex.R3W1/1; its postal receipts Ex.R3W1/2 and Ex.R3W1/3; certified copy of insurance policy Ex.R3W1/4; registration certificate of offending tractor Ex.R3W1/5 showing that it was registered for agricultural purpose only and certified copy of driving license of driver/ respondent no.1 Ex.R3W1/6.

6.3.2. Sh. Devender Kumar Singh, Senior Assistant, RTO Ghaziabad (R3W2) was examined to produce the registration documents of offendng vehicle.

6.3.3. Sh. Amit Shukla, Senior Assistant, ARTO Office,

Firozabad, U.P. (R3W3) was examined to produce the driving license record of respondent no.1.

7. I have heard Sh. Hemant Sharma, learned counsel for petitioner; Sh. Anuj Aggarwal, learned counsel for respondent no.1 & 2 and Sh. S. Ghosh, learned counsel for respondent No.3/ insurer. Record of the case has also been perused.

ISSUE NO.1

8. The facts of involvement of the offending vehicle in the accident and injury to the petitioner on account of the said accident, are not in dispute. Respondent no.1 and 2 have challenged the case of petitioner on the ground that respondent no.1 was not driving the offending vehicle in rash and negligent manner and the petitioner got injured only due to accident happened on account of uneven surface, which was beyond control of the respondent no.1. It is evident that petitioner has mentioned that on 12.03.2014 at about 03:00 p.m., when he was performing his duties at Landfill, Ghazipur, suddenly a tractor trolley, bearing registration number UP-14AZ-0662, filled with garbage, being driven by respondent no.1 at a high speed and in rash and negligent manner, came there and toppled resulting into injuries to both his legs. It is noteworthy that respondent no.1 and 2 have not even tried to rebut the allegation that the tractor was being driven at fast speed and in rash and negligent

manner and not even a suggestion was given to the petitioner on this aspect. Moreover, admittedly, respondent no.1 was charge-sheeted by the police in the criminal case for causing accident in the manner narrated by the petitioner. Further, it is also admitted fact that the respondent no.1 admitted his guilt in the criminal court and settled the dispute with the petitioner for a sum of Rs.20,000/-. On the other hand, respondent no.1 (R1W1) deposed that the tractor toppled as the surface was uneven and respondent no.1 was not negligent in any manner. In view of this Court, even if the case of respondent no.1 is accepted on its face value, still the evidence brought on record is sufficient to show that the respondent no.1 was rash and negligent. It is not the case of respondent no. 1 that he could not observe uneven surface where the petitioner was standing and the trolley was toppled. In view of this, respondent no. 1 was expected not to drive the tractor trolley over uneven surface or he was required to ask the petitioner to move aside before going ahead over uneven surface. Since the place of accident was landfill site, which has no concrete or metalled paths, respondent no.1 was required to be extra careful in driving the tractor trolley near a place where people were working. Thus, it is held that material on record is sufficient to show that the accident happened due to rash and negligent driving of respondent no.1. Issue no.1, accordingly, is

decided in favour of the petitioner and against the respondents.

ISSUE NO. 2

9. Section 168 of the Act enjoins the Claims Tribunal to hold an inquiry into the claim to make an award determining the amount of compensation which appears to it to be just and reasonable. It has to be borne in mind that the compensation is not expected to be a windfall or a bonanza nor it should be pittance.

MEDICAL EXPENSES:

10. The petitioner has claimed that he spent a sum of Rs.1.50 lakhs approximately on his treatment. Petitioner has placed on record original medical bills of Rs.34,337/- Ex.PW1/5 which are pertaining to medicines, investigations, consultations, hospital charges, etc. All these bills are in original and are found in order and there is no challenge to said bills.

11. Learned counsel for petitioner has submitted that rest of the bills were taken by respondent no.1 and 2 while he was admitted in the hospital, however, learned counsel for respondent no.1 and 2 argued that initially the entire medical expenses were borne by respondent no.2 company. Further, learned counsel for respondent no.2 emphasized that PW3 has clarified in his cross-examination that the entire expenses related to the treatment of petitioner were borne by respondent no.2

company as per information conveyed by Dr. R.M. Kaushik of Kaushik Nursing Home, Ghaziabad. It is also argued by learned counsel for respondent no.1 and 2 that claim petition of the petitioner is required to be rejected as he gave false statement that he himself has incurred the entire medical expenses. Considering that the statement of PW3 regarding the fact that the medical expenses were borne by respondent no.2 company, is hearsay in nature and further that the respondent no.1 and 2 did not place on record original medical bills in respect of which payment was allegedly made by them, this Court is of the view that the plea of respondent no.1 and 2 regarding rejection of the claim petition is required to be dismissed. Since the petitioner has been able to place on record original bills of Rs.34,377/-, that much amount is required to be reimbursed.

12. Thus, a sum of **Rs.34,377/-** is granted to the petitioner under this head.

PAIN AND SUFFERING:

13. The treatment record Ex.PW1/4, medical bills Ex.PW1/5, discharge summary Ex.PW1/6 and Ex.PW3/B make it clear that petitioner sustained grievous injury as he suffered fracture in both bones of right leg. Further, it is also evident that the petitioner remained hospitalized in Kaushik Nursing Home, Ghaziabad from 15.03.2014 to 23.03.2014 and then at Arogya

Hospital, Ghaziabad from 22.01.2015 to 28.01.2015. The said discharge summaries further indicate that during hospitalization of petitioner, surgeries were performed, firstly for Minimally Invasive Percutaneous Plate Osteosynthesis (MIPPO) and secondly for removal of implant. The treatment record further indicates that petitioner got treatment at least till February 2015 i.e. for about 11 months. Considering the nature of injury and duration of treatment, this court has no reason to doubt that petitioner had to suffer immense pain and suffering for quite long period of time and therefore, this court finds it appropriate to award a sum of **Rs.80,000/-** as compensation to the petitioner under this head.

LOSS OF INCOME (DURING TREATMENT):

14. The petitioner has examined PW4 to show that he has remained on 132 days leaves (medical + earned) i.e. from 13.03.2014 to 11.07.2014 and then from 25.09.2014 to 08.10.2014. He has mentioned in his affidavit that he suffered financial loss of Rs.75,000/- i.e. equivalent to three months' salary during his treatment as he was forced to take medical leaves, which were totally exhausted. On the other hand, learned counsel for insurance company argued that since all the leaves of petitioner were paid, it is clear that he has not suffered any financial loss and thus, he is not entitled for any compensation under this

head.

15. It has come on record that petitioner had to take medical leaves from 13.03.2014 to 11.07.2014 on account of injuries suffered in the accident and though the medical leaves were paid but it cannot be disputed that (almost) all the medical leaves must have been exhausted and after availing said leaves, petitioner must not have been left with any medical leaves in case of any requirement in future. Though the petitioner has claimed loss of Rs.75,000/- during his treatment but this court is inclined to grant him compensation of **Rs.60,000/-** (i.e. @ Rs.15,000/- per month for total 4 months) in lieu of exhausting his medical leaves.

LOSS OF FUTURE INCOME :

16. Petitioner has mentioned that on account of injuries suffered in the accident, he has suffered 21% permanent physical disability in his right lower limb and therefore, he would not be able to do any physical work after his retirement. On this aspect, learned counsel for insurance company has submitted that since the petitioner would be getting salary till his superannuation, loss of future income has to be counted only for the period post retirement and therefore, multiplier of 9 would be applicable. Reference has been made to the decision of High Court of Delhi given in the case titled **"Desh Raj Singh Gautam vs. Sunil**

Kumar & Ors." (MAC.APP.632/2007 and CM No.14323/2007, DOD-20.05.2016). Admittedly, petitioner was working as Beldar in MCD and was drawing salary of Rs.29,597/- per month as per salary certificate Ex.PW2/A, and his age was 47 years at the time of accident. In view of this, future prospects @ 30% are required to be considered.

17. PW5 has clarified that petitioner would not be having any problem in doing job of Beldar and he is able to enjoy the amenities of life except little difficulty in sitting cross legged and squatting. Further, PW5 mentioned that he cannot comment about the disability with respect of whole body of the petitioner. Thus, testimony of PW5 indicates that petitioner would be able to do almost all the routine physical activities on his own and thus, functional disability in respect of his whole body may be considered 5% only. Accordingly, taking the superannuation age of petitioner to be 60 years, multiplier of 9 would be applicable. In view of this, applying the multiplier 9 and future prospects @ 30% with 5% loss of income, the total loss of future income would come to be **Rs.2,07,771/-** [(5% of 29,597x130/100) x 9x12) and this amount is awarded to the petitioner, accordingly.

SPECIAL DIET, CONVEYANCE & ATTENDANT CHARGES:

18. Though the petitioner has claimed that he incurred Rs.30,000/- on his special diet and Rs.20,000/- on conveyance but

no specific evidence has been led on this aspect. However, considering the long duration of treatment and nature of injury suffered by the petitioner, there is no doubt that petitioner might have suffered reasonable amount for visiting doctors for a period of 11 months of his treatment as well as for his special diet, specially after his two surgeries. Therefore, a total sum of Rs.30,000/- is granted to petitioner for for special diet and conveyance charges (Rs.15,000/- each).

19. Though, no evidence has been led to show that an attendant was hired for providing assistance to the petitioner in his routine activities, however, considering the duration of treatment and nature of injuries suffered by the petitioner, it can be safely presumed that he must have been dependent on others for his routine activities. It is settled law that for claiming compensation, necessity of employing a professional attendant/ care taker is not required and the petitioner should be compensated for the value of services of the family members ***(Refer : DTC & Ors Vs. Lalita, 1983 ACJ 253).*** In view of above, a lump sum of Rs.20,000/- is awarded to petitioner as attendant charges.

20. Thus a total sum of **Rs.50,000/-** (Rs.15,000+15,000+ 20,000) is awarded to the petitioner under this head.

21. Thus, the compensation awarded to the petitioner is

summarized as under:-

Sl. No.	Head of compensation	Amount
1.	Medical Expenses	Rs.34,377/-
2.	Pain & Suffering	Rs.80,000/-
3.	Loss of income (during treatment)	Rs.60,000/-
4.	Loss of future income	Rs.2,07,771/-
5.	Special diet, conveyance and attendant charges.	Rs.50,000/-
TOTAL		Rs.4,32,148/- (rounded off **Rs.4,32,000/-)**

ISSUE NO. 3

22. On perusing the record, it is seen that petitioner has not conducted the proceedings diligently and therefore, vide order dated 29.10.2015, this court had ordered for dis-entitlement of the petitioner for the interest from 01.07.2015 till conclusion of petitioner's evidence. Thus, petitioner is not entitled for the interest for the period from 01.07.2015 to 06.06.2017. In view of this, petitioner would be entitled for interest @ 8% per annum on the award amount from the date of filing of the petition till date of realization excluding the above period.

ISSUE NO. 4

23. Insurance company has examined R3W1 to show that as per insurance policy/ certificate of the offending tractor

Ex.R3W1/4, it was required to be used for the agricultural and forestry purposes only. Further, R3W2 was also examined to show that the offending vehicle was registered as agricultural tractor only. In view of this, issue is decided in favour of the insurance company.

ISSUE NO. 5 & 6

24. Issue no.5 and 6 would be decided together as these are interconnected issues. It is not disputed fact that the offending vehicle was being used for dumping the garbage from slaughter house, situated at Ghaziabad, to nearby landfill. However, learned counsel for insurance company emphasized that the such use of the offending vehicle was commercial use and therefore, terms and conditions of insurance policy as well as of registration certificate, were breached by respondent no.1 & 2.

25. On the other hand, R2W1 has deposed that his company is in the business of food agro and further, learned counsel for respondent no.1 and 2 has placed on record copy of license agreement executed between MCD and respondent no.2 company, copy of certificate issued by APDA (Agricultural and Processed food products Expert Authority) and report of Planning Commission, Govt. of India, in support of their plea that activities of slaughter house fall within the term "agriculture", and thus, this is not a case of breach of any of the terms and

conditions of the insurance policy.

26. In view of this court, learned counsel for respondent no.1 and 2 have not placed on record any convincing material and has not relied upon any judgment of the higher court to substantiate his plea that activities of the slaughter house would fall in the ambit of agriculture. No doubt, material relied upon by learned counsel for respondent no.1 and 2 indicate that slaughtering of animals is an allied activity of agriculture but that is not sufficient to show that respondent no.1 and 2 would be eligible for exemptions or benefits prescribed only for agricultural activities. No material was placed on record to show that the business of respondent no.2 company was granted benefits and exemptions meant for proper agricultural activities.

27. Agriculture is the science and art of cultivating plants and livestocks. So farming or domestication of animals would definitely be covered under the agricultural activities but slaughtering and other related activities would be a step further and cannot be said to be a part of agriculture. Moreover, the said license agreement executed between respondent no.2 and MCD, relating to the operations of slaughter house, would clearly indicate that the licensee/ respondent no.2 was required to adhere to the operations and maintenance requirements and guidelines as per RFP and to adhere to the good industry

practices and moreover, it is also held to be solely responsible for compliance of all the labour laws.

28. In view of aforesaid discussion, this court is of the view that the offending vehicle was carrying out the commercial activity and not the agricultural activity, as claimed by the respondent no.2. Thus, there was clear violation/ breach of the term and condition of the insurance policy on the part of respondent no.1 and 2. Issue no. 5 and 6 are accordingly, decided against respondent no.1 and 2.

29. Regarding issue related to validity of driving license of respondent no.1 to drive the tractor, insurer had examined R3W3 to show that the tractor has not been mentioned in the category of vehicles, the respondent no.1 was authorized to drive on the basis of driving license issued to him. The driving license record Ex.R3W3/B would make it clear that the driving license of respondent no.1 was valid for driving LMV (light motor vehicle) from 2003 to 2023 and further for HTV (heavy transport vehicle) at the relevant time. Undoubtedly, the tractor comes in the category of LMV and respondent no.1 was having valid driving license to drive LMV on the date of accident. The issue has been settled by the Supreme Court in the decision given in the case titled as ***"Mukund Dewangan Vs. Oriental Insurance Co. Ltd., 2017 ACJ 2011"*** by holding that the driver holding driving

license to drive LMV can drive transport vehicles of that class without any endorsement to that effect. In view of this, it is held that respondent no.1 was having valid driving license to drive the tractor on the date of accident.

LIABILITY :

30. In the result of above discussion, insurance company would be liable to compensate the petitioner at the first instance and thereafter, would be entitled to recover the paid amount from the respondents no.1 and 2.

RELIEF:

31. In view of the findings on said issues, this Tribunal awards a total compensation of **Rs.4,32,000/-** (Rs. Four Lakhs Thirty Two Thousand Only) alongwith interest **@ 8% per annum** w.e.f. date of filing of the petition till the date of its realization excluding the aforesaid period (01.07.2015 till 06.06.2017), in favour of petitioner and against the respondent No.3/ insurer and same is required to be deposited with this Tribunal within 30 days. Thereafter, the insurance company would be entitled to recover the said amount from the respondent no.1 and 2, in accordance with law.

32. Copy of award be supplied to both the parties for compliance, free of costs.

33. Form IV-B and Form-V in terms of MCTAP are

annexed herewith as Annexure A & B respectively. Copy of award be sent to concerned MM and DLSA in view of clause 35 and 36 of MCTAP.

VIVEK KUMAR GULIA

Digitally signed by VIVEK KUMAR GULIA
Location: East District, Karkardooma Courts, Delhi
Date: 2020.10.21 17:06:01 +0530

Announced in the open Court on 21.10.2020
(Total 19 pages)

(Vivek Kumar Gulia)
Presiding Officer-MACT (East)
Karkardooma Courts, Delhi