

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

MAC. APP. No. 736/2007

Judgment delivered on: February 13, 2008

UOI

..... Appellant.

Through: Mr. Pankaj Batra, Adv.

versus

Shri Ankur Pachauri, Minor

through Lt. Col. V.B.L.Pachauri

..... Respondent

Through: Nemo

**CORAM:**

**HON'BLE MR. JUSTICE KAILASH GAMBHIR,**

- |                                                                              |     |
|------------------------------------------------------------------------------|-----|
| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not?                                        | Yes |
| 3. Whether the judgment should be reported in the Digest?                    | Yes |

**KAILASH GAMBHIR, J. Oral:**

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The present appeal has been preferred against the award dated 16.08.2005 of the Motor Accident Claims Tribunal. The brief summary of the facts to deal with the contentions of the parties are as under:-

Shri Ankur Pachauri, Minor in the morning of 03.07.1992 was coming from his home on bicycle and was to enter the main road from the approach road of the Station Workshop, Delhi Cantt. He was on the proper side of the road in normal speed when an Army Jeep bearing registration no. 88 B 46175Y coming from the opposite direction driven by its driver in rash and negligent manner at a high speed, from the main road hit the cyclist. As a result of forceful impact, he was dragged to some distance and fell down and sustained injuries on his head. He was removed to Army Hospital for his treatment.

Mr., Pankaj Batra, Counsel for the appellant contends that the Tribunal has awarded a sum of Rs. 1,80,000/- on account of loss of earning of one year of the appellant. The contention of the counsel for the appellant is that there is no basis for the Tribunal to arrive at such a figure of Rs. 15,000/- per month and the findings of the Tribunal are totally presumptuous. Counsel for the appellant further contends that the respondent was just 9 years old at the time of the accident and the Tribunal has assessed his income at Rs. 15,000/- per month on the presumption that he would have drawn a salary of Rs. 15,000/- per month as such a salary is minimum earning of a newly appointed engineer. Counsel for the appellant further contends that the Tribunal has given undue weightage to the additional evidence led by the respondent and has drawn an analogy from the

salary of the his younger sister, who was drawing a package of Rs. 2,03,401/-. Counsel for the appellant further contends that adequate opportunity has not been afforded to the appellant to lead the evidence. Counsel also contends that it is due to the negligence of the officer, who was entrusted the said case by the appellant that the requisite steps before the Tribunal could not be taken by the appellant.

I have heard learned counsel for the appellant at considerable length and have perused the record.

The evidence of the respondent was closed vide order dated 16<sup>th</sup> August, 2005 and on the same very date the statement was made by the respondent/appellant herein that they did not wish to lead any evidence. Perusal of the Trial Court record further shows that the appellant had failed to cross-examine the respondent/claimant despite opportunity given to the appellant in this regard. Counsel further contends that on 6<sup>th</sup> March, 2007 without giving opportunity to the respondent/appellant the additional evidence of the respondent/claimant was taken on record. Perusal of the Trial Court record shows that vide orders dated 15.9.2006 adjournment was sought by the respondent/appellant as their counsel was not available and on the adjourned date i.e. 27<sup>th</sup> November, 2006 again adjournment was sought by the respondent/appellant and Court gave last opportunity to the

respondent/appellant to address the arguments. The respondent along with the petitioner was also given liberty to file his written arguments. Again on the next date i.e. 18<sup>th</sup> January, 2007 only proxy counsel for the respondent/appellant appeared and adjournment was sought. On 6<sup>th</sup> March, 2007 nobody was present from the side of the respondent/appellant, although the case was called several times by the Court and since nobody was present from the side of the respondent/appellant the Court had permitted the respondent/claimant to lead his additional evidence and the matter was adjourned to 10<sup>th</sup> April, 2007. On 10<sup>th</sup> April, 2007 the matter was heard by the Tribunal as counsel for both the sides were present. Perusal of the record, therefore, shows that the appellant had not only closed its own evidence, but failed to cross-examine the respondent/claimant as well. The respondent has duly proved his case on record and there is thus unrebutted testimony of the respondent, which remained unchallenged throughout the proceedings. Once the appellant himself remained complacent in the matter and did not take adequate steps to prosecute the case properly, he cannot turn around now at the appellate stage to claim that adequate opportunity was not afforded to the appellant. In view of the unrebutted testimony of the respondent/claimant, on the basis of which the Tribunal has given the findings in the impugned Award dated 16.08.2005. I do not find any illegality or perversity in the impugned Award.

Dismissed.

**February 13, 2008**  
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**KAILASH GAMBHIR J.**