

IN THE HIGH COURT OF DELHI AT NEW DELHI**+ MAC.APP.No.552/2008**

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Date of decision: 9th September, 2009

MASTER NAVEEN Appellant
Through : Ms. Manjusha Wadhwa, Adv.

versus

SIKANDER & ANR. Respondents
Through : None.

CORAM :-**THE HON'BLE MR. JUSTICE J.R. MIDHA**

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

JUDGMENT (Oral)

1. The appellant has challenged the award of the learned Tribunal whereby his claim petition has been dismissed by the learned Tribunal.

2. The appellant was aged 11 years at the time of the accident. The appellant was a student of sixth standard at that time. On 1st June, 2004, the appellant was sitting on the pillion of motorcycle bearing No.DL-5SN-9647 when the said motor cycle hit against the pavement due to which the appellant fell down and sustained grievous injuries. The appellant appeared in the witness box as PW-1 and deposed that he was sitting on the pillion of the motorcycle which was driven at a very high speed of

about 80 Km/hr. He further deposed that driver was in a drunken position and the motorcycle hit against the divider due to which the appellant became unconscious and sustained fracture in right leg which was operated upon and a steel rod was inserted. The appellant spent about Rs.50,000/- on his treatment which continued for seven months.

3. The learned Tribunal dismissed the claim petition of the appellant on two grounds. The first ground is that the appellant has not cross-examined the driver of the motorcycle who appeared in the witness box as R1W1. The second ground is that the driver was in drunken condition and the appellant knew the same and, therefore, cannot claim compensation.

4. The learned Tribunal has not conducted any inquiry as contemplated under Sections 168 and 169 of the Motor Vehicles Act. The findings of the learned Tribunal are not based on the evidence on record. The appellant appeared in the witness box and clearly deposed that the driver was in a drunken condition and was driving the motorcycle at a very high speed of about 80 km/hr. and hit against the pavement. The appellant also clearly stated in his cross-examination that he was not aware at the time of sitting on the motorcycle that the driver was drunk and it is only when the accident occurred that the appellant came to know about the fact of driver being drunk.

5. There is sufficient material on record to infer negligence of the driver of the motorcycle and the findings of the learned Tribunal in this regard are not sustainable. However, since the

learned Tribunal has not given any finding on the quantum of compensation, this case needs to be remanded back to the learned Tribunal.

6. The appeal is allowed and the impugned award is set aside. The driver of the motorcycle is held to be rash and negligent. With respect to the quantum of compensation, the case is remanded back to the learned Tribunal to conduct an appropriate inquiry under Sections 168 and 169 of the Motor Vehicles Act.

7. The parties are directed to appear before the learned Tribunal on 24th September, 2009.

8. The LCR be returned back forthwith.

9. Copy of this order be given 'Dasti' to learned counsel for both the parties under the signature of Court Master.

J.R. MIDHA, J

SEPTEMBER 09, 2009
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