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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 28th August, 2012

+ **MAC. APP. No.695/2007**

MASTER JAGRIT JOSHI

..... Appellant

Through: Mr. Ram N. Sharma, Advocate.

Versus

SUMER SINGH MALIK & ORS.

..... Respondents

Through: Ms. Suman Bagga, Advocate for the
Respondents No.2 Insurance Company.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appeal is for enhancement of compensation of ₹40,890/- awarded by the Motor Accident Claims Tribunal(the Claims Tribunal) in favour of the Appellant, a seven year old boy, for having suffered injuries in a motor vehicle accident which occurred on 31.05.2003.
2. A Claim Petition under Section 166 of the Motor Vehicles Act, 1988 (the Act) was preferred by the Appellant on the allegation that on 31.05.2003 at about 5:30 pm, he was crossing the road opposite his House No. C-2/283, Janakpuri. A motorcycle No.DL-4-SM-C-8240 being driven in a rash and negligent manner by the Respondent No.3 came from the side of Central School and hit him. The Appellant suffered head injuries apart from injuries on other parts of the body. He was removed to Mata Chanan Devi Hospital where he was found to be bleeding from his right ear.

3. On the basis of pleadings of the parties, the Claims Tribunal framed the following issues:

“1. Whether the petitioner received injuries due to rash and negligent driving of vehicle No.DL-4-SM-C-8240 (Motorcycle) by R-3?

2. Whether the petitioner is entitled to any compensation, if so, to what amount and from whom?”

4. While dealing with the issue of negligence, the Claims Tribunal opined that the Appellant who was a minor aged seven years was permitted to cross the road without being accompanied by an adult member of his family. Thus, the Claims Tribunal held that there was contributory negligence on the part of the Appellant.
5. In order to prove negligence, the Appellant examined his uncle Rajiv Joshi. He deposed that on 31.05.2003 his nephew (the Appellant) was trying to cross the road to go to the park opposite their house. In the meanwhile, a motorcycle No.DL-4-SM-C-8240 came from Central School side. The motorcycle was being driven at a very high speed and in a negligent manner by its driver Praveen Singh Malik. The motorcycle hit his nephew Jagrit. As a result of the impact, Jagrit fell down and became unconscious. The witness denied the suggestion that the child was crossing the road without seeing towards left or the right(to ensure that no vehicle was approaching). To rebut the Appellant's case, Respondent Praveen Singh Malik filed his affidavit Ex.R3W1/A testifying that he was not driving the motorcycle rashly and negligently. He deposed that the accident occurred due to negligence on the part of the Appellant. The Respondent Praveen Singh Malik was completely silent as to how the Appellant came on the road. Thus, his testimony is completely silent as to the manner of the accident.

6. A perusal of the certified copy of the site plan available on the Trial Court record reveals that the accident took place in a residential area. The Appellant's house was opposite to the DDA park and he (the Appellant) was proceeding to that park. It further reveals that the accident took place almost in the middle of the road. When the Respondent driver was passing through a residential locality, it was expected of him to be extra cautious. Had the driver been a little cautious, he would have noticed the child crossing the road and would have stopped the two-wheeler immediately. In the circumstances, the Claims Tribunal's finding on negligence cannot be sustained. It is established that the accident was caused solely on account of the negligence of the Respondent Praveen Singh Malik in driving the two-wheeler.
7. It has to be borne in mind that in a Claim Petition under Section 166 of the Act, negligence is required to be proved on the touchstone of preponderance of probability. In *Bimla Devi and Ors. v. Himachal Road Transport Corporation and Ors.*, (2009) 13 SC 530. Para 15 of the report is extracted hereunder:
- “15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.”*
8. With regard to the quantum of compensation, the Claims Tribunal opined that on account of the injuries suffered in the accident, the Appellant lost hearing from his right ear. The Appellant remained admitted to Mata Chanan Devi Hospital from 31.05.2003 to 07.06.2003. The discharge

record Ex.PW1/A shows that the Appellant suffered head injury and was bleeding from ear. The Appellant's father claimed that a sum of ₹82,962/- was spent on the treatment. However, the bills proved on record totalled up to ₹22,777/- only. The Claims Tribunal awarded a sum of ₹22,780/-. The Appellant remained under treatment even after discharge from the Hospital. Therefore, I would award a sum of ₹25,000/- towards expenditure on medical treatment as against ₹22,780/- awarded by the Claims Tribunal.

9. The Appellant was a small child of seven years at the time of the accident. It would be difficult to assess the exact loss of earning capacity. The Claims Tribunal awarded a sum of ₹10,000/- under this head which seems to be very low. It is established that the Appellant lost hearing from one of his ear for all times to come. In the circumstances, I would enhance the compensation towards disability/loss of earning capacity from ₹10,000/- to ₹50,000/-. I further make a provision of ₹50,000/- towards loss of amenities in life and for purchase of hearing aids till he survives. The compensation of ₹19,000/- awarded towards conveyance and special diet is raised to ₹20,000/-. The compensation of ₹25,000/- awarded towards pain and suffering is maintained.
10. It was proved on record that the Appellant could not go to school for a period of four months. I would award a sum of ₹5,000/- towards loss of studies. The overall compensation is thus recomputed as under:

Sl. No.	Compensation under various heads	Awarded by this Court
1.	Loss of Disability/Future Earning Capacity	₹50,000/-

2.	Loss of Amenities and Purchase of Hearing Aids	₹ 50,000/-
3.	Medical Treatment	₹ 25,000/-
4.	Special Diet and Conveyance	₹ 20,000/-
5.	Pain and Suffering	₹ 25,000/-
6.	Loss of Studies	₹ 5,000/-
	Total	₹ 1,75,000/-

11. Thus, the compensation is enhanced by ₹1,34,110/- which shall carry interest @ 8% per annum from the date of the filing of the Petition till its payment.
12. The Respondent Insurance Company during inquiry before the Claims Tribunal took up the plea that the driver's (the Respondent Praveen Singh Malik) driving licence No.1923/NWP/2001 was fake. The Claims Tribunal held that not only the licence was fake, but it was obtained from the State of Nagaland although the Respondent Praveen Singh Malik was a resident of Delhi. The Claims Tribunal referred to the provisions of Section 9 of the Act and opined that there was a willful breach of the terms of the policy on the part of the Respondent Praveen Singh Malik and granted recovery rights to the Appellant. This finding has not been challenged by the owner and the driver. In fact, Respondents Sumer Singh Malik and Praveen Singh Malik preferred not to contest the Appeal despite service. The Respondent Insurance Company shall make the payment of the enhanced compensation and shall be entitled to recover the same from the owner and the driver without having recourse to independent proceedings, in execution of this very judgment.

13. The Respondent No.2 is directed to deposit the enhanced amount of ₹1,34,110/- in the name of the Appellant in UCO Bank, Delhi High Court Branch within six weeks and shall be held in fixed deposit for a period of five years. The Appellant shall be entitled to premature release of the amount, if needed, for his higher studies.
14. The Appeal is allowed in above terms.
15. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

AUGUST 28, 2012
pst