

\$~R-138

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

Date of Decision: 01.06.2016

+ **MAC.APP. 120/2008 & CM No.2769/2008**

DELHI TRANSPORT CORPORATION & ANR. Appellants
Through: Mr. J.N. Aggarwal, Adv.

versus

SHRI KAMAL SINGH Respondent
Through: None .

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 22.12.1997, the first respondent (claimant) had boarded bus No. DL 1P 9586 (the bus), of Delhi Transport Corporation (first appellant) from Gurgaon Road, Phool Mandi on way to Mehrauli. At the bus terminus of Mehrauli as the claimant was getting down around 5.45 p.m., the bus was put suddenly in motion by its driver (second appellant) resulting in he losing the balance and falling down to be run over by the front wheel of the vehicle. His right hand and right shoulder were fractured. He filed an accident claim case (Petition No. 883/2004), seeking compensation under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) on 22.03.2001 impleading both the appellants as respondents.

2. The tribunal held inquiry and, by judgment dated 09.10.2007, returned a finding that the accident had occurred and injuries sustained on

account of negligent driving of the bus. It awarded compensation in the sum of ₹ 2,55,200/- with interest @ 9 % per annum in favour of the claimant, the said amount inclusive of ₹ 1,87,200/- towards loss of future income on account of disability, which was assessed to be permanent to the extent of 30%.

3. By the appeal at hand, the appellants questioned the finding on the issue of negligence and also submitted that the tribunal fell into error by accepting the claim of disability on the basis of disability certificate (Ex.PW1/B) to the extent of 30%.

4. Having heard the learned counsel for the appellant, this Court finds no merit in the appeal.

5. The evidence of the claimant appearing as PW-1 on the basis of his affidavit (Ex.PW1/A), brought out the sequence of events resulting in injuries being suffered. It appears that the second appellant (driver) also testified as RW1 stating that the claimant had jumped from the front gate while it was taking a turn. In the facts and circumstances, however, the view taken by the tribunal accepting the version of the claimant does not call for any interference.

6. The tribunal accepted the disability proved on the basis of certificate (Ex.PW1/B) which shows post traumatic deformity of the right elbow with loss of partial ROM in the right upper limb. It does appear that the disability was certified by the board of doctors to be 20% in relation to right upper limb but given the fact that the claimant was working to earn his livelihood as a mason, the assessment of functional disability at 30% cannot be faulted.

7. Thus, the appeal is unmerited and dismissed.
8. Statutory amount, if deposited, shall be refunded

(R.K. GAUBA)
JUDGE

JUNE 01, 2016/nk

