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

Date of Decision: 31.05.2016

+ **MAC.APP. 47/2008**

SHYAM LAL

..... Appellant

Through: None.

versus

CHITTAR KHAN AND ORS.

..... Respondent

Through: Mr. Amit Gaur for Mr. Pradeep Gaur,
Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellant, then aged 33 years, was working as *Palledar* (loader) on 19.10.2004 when he was injured in a motor vehicular accident that occurred at about 9.30 p.m. in the area of New Subzi Mandi due to negligent driving of truck bearing No. RJ 14G 3918 (offending vehicle), admittedly insured against third party risk with the second respondent (insurer) for the period in question. He instituted an accident claim case (Petition No. 176/2006) on 9.12.2004 seeking compensation under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) impleading as respondents Chittar Khan (first respondent), he being the driver-cum-owner of the offending vehicle, in addition to the insurer, on the averments that the accident had occurred due to negligent driving of the said vehicle.

2. Upon inquiry and, by judgment dated 24.10.2007, the tribunal returned a finding accepting the case of the claimant about he having suffered injuries due to negligent driving of the offending vehicle. The said finding has since attained finality as it was not challenged further. The tribunal found on evidence that the claimant had received crush injuries and fractures of both the thighs. Evidence was led to prove that having suffered pelvic fracture, he had remained hospitalized at least thrice. During the surgical procedures undergone, a urine bag was attached to his body which he claims to have been continued to be carried till the date of the judgment before the tribunal and beyond. The tribunal awarded compensation in the sum of Rs.95,000/- which includes Rs.10,000/- assessed as medical expenses, Rs. 15,000/-towards conveyance, special diet and attendant charges and Rs. 40,000/- towards loss of income besides Rs. 30,000/- towards pain & suffering.

3. Feeling aggrieved with the compensation granted, the claimant filed the present appeal seeking enhancement. At the hearing, it is submitted on his behalf that the condition of the claimant has remained the same till date. The counsel submitted that the urine bag which was fixed to the body of the claimant in 2004 continues to be carried by him till date and inspite of various visits to the hospital, even pursuant to the directions of this Court by order dated 30th November, 2010, he has not received proper treatment nor the nature or extent of his disability assessed. It is his contention that the tribunal had failed to conduct a proper inquiry to assess the loss of income actually incurred and also the medical expenditure which he had to bear. In these circumstances, he referred to the evidence of Dr. Sanjay Singh (PW-5)

which reveals that the claimants' case is not only of a fracture of pelvic bone but also of urethral rupture on which account he had to undergo strictnuoplasty for stricture urethra inspite of which the condition would not improve. As per the opinion of PW-5, the claimant would require frequent and regular visits to the hospital for change of Supra Pubic Cystostomi (SPC). The medical opinion (As per PW-5) is that on account of complete stricture urethra on cystoscopy, ejaculation will not be possible and he would require corrective surgery.

4. Against the backdrop of above-noted medical opinion, the grievance of the claimant in appeal is that the tribunal has failed to hold proper inquiry or award just compensation. The counsel for the claimant/appellant at the same time submitted that instead of pressing for enhancement at this stage in appeal, he would rather have the matter remitted to the tribunal so that he can lead further evidence about the continuing need for treatment and disability and seek appropriate compensation to be assessed and awarded. The counsel for the second respondent (insurer) on being asked submitted that he has nothing to say on the request thus made.

5. In the given fact-situation as brought out above, the request of the appellant is granted. The appeal is allowed. The impugned judgment insofar as it assessed and awarded compensation in favour of the claimants is set aside. The matter is remitted to the tribunal for further inquiry and fresh adjudication restricted to the quantum of compensation. Needless to add, the amount already received by the claimant in terms of the earlier dispensation shall be suitably adjusted.

6. The parties are directed to appear before the Tribunal on 14th July, 2016, for further proceedings.

7. The appeal is disposed of in above terms.

(R.K. GAUBA)
JUDGE

MAY 31, 2016

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