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

Date of Decision: 10th March, 2016

+ **MAC.APP. 489/2010**

NANAK CHAND & ANR Appellants

Through: None.

versus

DEEPAK JAIN & ORS Respondents

Through: Mr. Rajat Brar, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Both the appellants had suffered injuries in a motor vehicular accident that had occurred on 05.04.2006 in the area of police station Tuglak Road near Khan Market, New Delhi, when the scooter bearing registration no.DL-4SAD-9364 (the scooter) on which they were travelling, was hit by a Honda city car bearing registration no.HR-26AA-4689 (the car), the latter admittedly insured against third party risk with third respondent (insurer). The scooter was driven by the second appellant with the first appellant (father of the former) travelling on the pillion. The car was statedly driven by the first respondent and owned by the second respondent. It was alleged that the accident had occurred due to rash/negligent driving of the car by the first respondent.

2. The appellants brought two separate claim petitions under Sections 166 & 140 of the Motor Vehicles Act, 1988 (the MV Act) which were

registered as suit no.632/2006 & 625/2006 respectively. Both the petitions were decided by the motor accident claims tribunal (the tribunal) by a common judgment dated 11.12.2009. The tribunal awarded compensation in the sum of ₹1,01,799/- to the first appellant and in the sum of ₹23,004/- to the second appellant. In both the cases, interest at the rate of seven percent (7%) from the date of filing of the petition till realization of the petition (12.09.2006) was also granted.

3. This appeal has been filed by the two claimants jointly against the award on their respective petitions registered as separate claim cases. Strictly speaking, this was not proper, as separate appeals were required to be filed. But, having regard to the fact that appeal was entertained in 2010 and has remained on board ever since, it will not be proper to now ask for it to be split up into two separate appeals. The registry must take care in future.

4. It is noticed that appeal having been filed, the appellants have not shown due diligence to prosecute it effectively. Adjournment was taken by the counsel on their behalf on the last date through proxy. It was noted in the order dated 16.12.2015 that neither the counsel nor the appellant have been appearing for the last several dates of hearing. No adverse order was passed but the appellants were directed to remain present today. Neither the appellants nor their counsel have appeared even today inspite of the said order.

5. There is no reason to defer the hearing yet again or to dismiss it in default only to await an application for restoration coming up on its close heels. The case has to attain finality.
6. Having heard the counsel for the insurer and having gone through the grounds of appeal, this court finds substance only with regard to the grievance respecting the rate of interest levied.
7. In the case of first appellant, the tribunal considered the evidence adduced and computed compensation in the following manner:-

“Petitioner in his evidence, deposed that petitioner remained admitted in Dr. RML hospital and discharged on 23.4.2006 and proved discharge report as Ex.PW4/4 and deposed that he was treated there for wounds and fracture of left leg. He has also brought on record various prescription slips which are Ex.PW4/5 (in nine pages) which shows that he had continued to take treatment on number of visits. He has also placed on record medical bills as Ex.PW4/6 (in 26 pages). He has also placed on record fare/petrol bills as Ex.PW4/7 (in 17 pages). He is entitled firstly on account of pain, shock and sufferings . Keeping in view more than 15 days confinement in the hospital due to fracture of leg and other wounds. I allow him Rs.20,000/- for pain and sufferings. I allow amount of bills Ex.PW4/6 which comes to Rs. 16799/- .I also award Rs.5000/- on account of conveyance, special diet and physio care. Petitioner deposed that he was having construction company and his annual income was Rs.1,30,000/-per annum though he has produced income tax return for the year 2005- 2006. He has claimed expenses for one year for treatment. There is no evidence of definite loss suffered by him. However, some loss on account that he has not been able to attend his business can be assumed. Keeping in view that he was attending OPD and such injuries generally take time to recover, loss of business can be assumed. I allow him sum of Rs.60,000/- for loss of business.

Keeping in view above findings, petitioner is entitled for the following amount as compensation;

<i>a</i>	<i>On account of medical bills</i>	<i>: Rs.16,799/-</i>
<i>b</i>	<i>On account of pain and suffering</i>	<i>: Rs.20,000/-</i>
<i>c</i>	<i>On account of lOWSS of business</i>	<i>: Rs.60,000/-</i>
<i>b</i>	<i>On account of conveyance</i>	
	<i>special diet and physio care</i>	<i>: Rs. 5,000/-</i>
<i>Total</i>		<i>: Rs.1,01,799/-</i>

Petitioner is also entitled for the interest @ 7% per annum from the date of petition till realization.”

8. The tribunal has taken note of the income tax (ITR) and the evidence led to the effect that his income was ₹1,30,000/- per annum for the year 2005-2006. No evidence was led to show that the said appellant was unable to work for gain for a period of one year due to the injuries. In these circumstances, the tribunal made a fair assessment and granted ₹60,000/- towards loss of income. There is no evidence to show that the said claimant had suffered permanent disability so as to the granted any compensation towards the loss of future income. The medical bills as produced were accepted in entirety and the compensation towards medical expenses granted accordingly. The award under non-pecuniary heads of damages in the given facts and circumstances is also found to be just and proper.

9. In the case of the second appellant, the tribunal considered evidence and computed compensation as under:-

“Petitioner Mam Raj also tendered his affidavit and examined himself as PW1. His evidence shows that he has brought on record various papers of treatment after the accident and he was admitted in Dr. RML hospital from 5.6.2006 and discharged on same day. He suffered injuries on same leg where he earlier suffered injuries and he was operated in AIIMS and therefore, he again took treatment from

there though he claimed that he had spent Rs.1,00,000/- for treatment but he has not brought any document in support of that. Though, he has placed on record, treatment papers. Keeping in view his long treatment due to injuries suffered in accident, he is allowed Rs.20,000/- for pain, shock and sufferings. He has proved medical bills as Ex.PW1/6 (Colly) amounting to Rs.3004/-. I award him Rs.3004/- on account of medical bills. Total compensation comes to Rs.23004/- alongwith interest @ 7% per annum from the date of filing of petition till realization.

10. In the opinion of this court, the tribunal has made an appropriate assessment of the compensation awardable on the evidence adduced. The reasoning set out and the conclusions reached as above cannot be faulted.

11. Whilst there is no case made out for compensation to be enhanced, following the consistent view taken by this court, rate of interest is increased to nine percent per annum from the date of filing of the petition till realization (see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*).

12. With above modification in the two awards, the appeal is disposed of.

13. The insurance company is directed to deposit the amount payable in terms of the increase in the interest with the tribunal within 30 days of this judgment whereupon the same shall be released to the respective claimant.

14. The statutory deposit, if made, shall be refunded.

15. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 10, 2016
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