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

Date of Decision: 18th February, 2016

+ **MAC.APP. 599/2006 & CM NO.27663/2015**

SUNIL RATRA

..... Appellant

Through Mr. Asit Tewari, Adv.

versus

SHIV SINGH & ORS.

..... Respondent

Through Mr. P R Sikka and Mr. Amet Sikka,
Advs. For R-2

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellant was travelling in Maruti car bearing No.DL 2CN 2581 on way to Nainital from Delhi with his wife Pushpa when the car met with an accident at about 02:30 hours on 21.05.2004 in the area of Haldwani Road, Uttarakhand on account of collision against truck No.UHC 915 (the offending vehicle) which concededly was insured with the second respondent (the insurer) against third party risk for the period in question. Both the appellant and his wife suffered injuries and filed their respective claim petitions under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) in the Motor Accident Claim Tribunal (the Tribunal), on 23.09.2004, the claim case of the appellant having been registered as petition No.350/2004. Both the claim cases were inquired into decided by

the Tribunal by common judgment dated 23.01.2006. The driver and the owner of the offending vehicle were held jointly and severally liable and the insurer was called upon to indemnify on account of the insurance policy. In the case of the appellant, the Tribunal awarded compensation in the sum of ₹2,13,662/- with interest at 6% per annum from the date of filing of the petition till 06.04.2005 and thereafter w.e.f. 28.10.2005 till realization.

2. The appellant came up with the appeal at hand questioning the computation of the compensation expressing grievance that the same has not been adequately awarded.

3. At the hearing the appeal is pressed only for increase in the compensation on account of loss of income and reimbursement of medical expenses.

4. The appellant, in his petition, had stated that he was employed with M/s Safe Switch Gears and Meters Pvt. Ltd. in Bangalore with income in the range of ₹55,000/- to ₹60,000/- per month. He referred to income tax return (ITR) for assessment year 2002-03 indicating the income for the corresponding financial year to be ₹78,559/-. During the inquiry, he examined himself on the strength of his affidavit (Ex.PW1/X) and claimed to be employed with M/s Avtar Overseas Pvt. Ltd. at a much higher income. He referred to the ITR for the assessment year 2003-04. The Tribunal was not convinced with the said claims taking note of the admission of the appellant that M/s Avtar Overseas Pvt. Ltd. had only extended an offer of employment. Since the original ITRs were not produced, the claim of the level of income was rejected and the Tribunal awarded total compensation of ₹15,000/- towards loss of income.

5. At the hearing, the counsel for the appellant submits he is only pressing for the loss of income for a period of three months and on the basis of application under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (CPC), placed on record the requisite documents including the original ITR for the assessment year 2003-04 and copy of the ITR for assessment year 2004-05 along with the copies of form 16 issued by the respective employers. Having regard to the material now submitted, there is no reason why the income of the appellant should not be assessed on such basis.

6. The ITR for assessment year 2004-05 (which corresponds to the financial year 01.0.2003 to 31.03.2004) is for the period immediately preceding the date of accident (21.05.2004). Thus, the income declared in the said return (₹365287/-) is accepted as proof of the earnings at the relevant point of time and, thus, the monthly income is calculated at $(3,65,287 \div 12)$ ₹30,440/- In this view, the loss of income for the period of three months, as is shown by the material on record to be the period when the appellant had remained under treatment, deserves to be compensated. Therefore, an amount of $(30,440 \times 3)$ ₹91,320/- is awarded under the head of loss of income in place of notional loss of ₹15,000/-. Thus, the award under the said head, needs to be increased by $(91,320 - 15000)$ ₹76,320/-.

7. The appellant had produced at inquiry medical bills showing expenditure in the sum of ₹31729.59. The Tribunal did not accept part of the said documents and restricted the reimbursement of medical expenses to ₹15,000/- only observing that some of the bills appear to have been written by the same person, the medicines having been purchased from the same chemist. This logic is unacceptable. If a person requires medicines, he would

ordinarily go to the chemist shop which is convenient to the place where he is located and if the medicines are required to be purchased repeatedly, recurrent visits to the same chemist cannot be questioned. Thus, this Court concludes that the entire medical expense shown by the documents submitted i.e. ₹31,729.59, deserve to awarded instead of lumpsum sum of ₹15,000/-. In the result, the award on this count would need to be increased by (31,730 – 15,000) ₹16,730/-.

8. For the foregoing reasons, the awarded amount is enhanced by (76,320 + 16,730) ₹93,050/- (Rupees Ninety Three Thousand and Fifty only). The enhanced amount shall also carry interest at the rate levied by the tribunal.

9. The insurer is directed to deposit the enhanced amount of compensation with corresponding up-to-date interest with the Tribunal within 30 days of it whereupon it shall be released to the claimant in terms of the directions in the judgment of the Tribunal. The appeal is disposed of in these terms.

10. Tribunal's record be returned.

R.K. GAUBA
(JUDGE)

FEBRUARY 18, 2016
VLD