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

Date of Decision: 27th January, 2016

+ MACA No. 657/2006

UOI and Anr. Appellants

Through: Mr. Jaswinder Singh, Adv.

versus

MUKESH SAXENA Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. This appeal by Union of India and its employee (second appellant) challenges the award granted by the motor accident claims tribunal ("the tribunal") by judgment dated 04.01.2006 in favour of the respondent herein on his claim petition under Section 166 read with Section 140 of Motor Vehicles Act, 1988 ("the MV Act") registered as suit no.123/2004 (old no. 162/1995) granting compensation in the sum of Rs.4,88,080/- for injuries statedly suffered by him in motor vehicular accident that occurred on 28.10.1994 at about 05:30 PM near Shiv Mandir in I.P. Estate opposite Indira Gandhi Stadium wherein two vehicles, one a two wheeler scooter bearing registration no.DL-3S-3027 (scooter), driven by the claimant, and the other a three wheeler scooter or delivery van (TSR) bearing registration no. DHG-7035, admittedly

owned by the first appellant and driven by the second appellant herein had collided with each other.

2. The claim petition had alleged that the accident had occurred due to rash/negligent driving on the part of the second appellant. It was claimed that the claimant had suffered several injuries including two fractures one of the femur bone and other on the radius bone. He also claimed during inquiry before the tribunal that he had suffered permanent partial disability to the extent of 27 % in relation to the whole body and relied on certificate (Ex.P-1) to this effect issued by board of doctors of Guru Teg Bahadur Hospital of the Govt. of NCT of Delhi on 13.07.2001. The tribunal upheld the contention and on the basis of his testimony concluded that he was earning Rs.7000/- per month at the relevant point of time and, thus, calculated the loss of earnings, loss of future earnings and computed the compensation.

3. In the appeal, reference has been made to copy of the judgment dated 24.04.2001 of the court of Metropolitan Magistrate in case serial no.24/2002 of 1994 arising out of corresponding FIR no.398/1994 of police station I.P. Estate whereby the second appellant was held guilty and convicted only on the charge for offence punishable under Section 279 of Indian Penal Code, 1860 ("IPC") but acquitted of the charge under Section 338 IPC. The contention raised is that since the grievous hurt was not proved in the corresponding criminal case, the tribunal should not have granted any compensation on the ground that claimant had suffered any such injuries or permanent disability.

4. I am afraid the appellant has not understood the basic difference between a criminal trial and a case based on law of torts. The result of

the criminal case can have no bearing on the result of a claim case under the tort liability, as codified under Section 166 of MV Act. The reference to the judgment of criminal court, thus, is improper.

5. The learned counsel for the appellant then argued that the disability certificate (Ex.P-1) was surreptitiously introduced on record and brought in evidence without proper mode of proof being followed. His argument is that the concerned medical officer who had given the disability certificate should have been examined. He relied on judgment in *Nathulal vs. Kachrulal & Ors.*, 2014 ACJ 263 of a learned single judge of Madhya Pradesh High Court.

6. On careful consideration, I find the submission of the appellant cannot be accepted. From the report in *Nathulal* (supra), it is clear that the opposite party had taken objection to the mode of proof which is why the judgment of tribunal denying any benefit on the basis of disability certificate which had not been properly proved was upheld. In the case at hand, it cannot be said that the document was surreptitiously introduced only because it is found in the trial court record (at page 113) immediately after the index (page 111) dated 01.11.1995. Since the index (page 111) does not even refer to this disability certificate, it cannot be said that this document was purported to have been filed under its cover.

7. It is clear from the proceedings recorded by the tribunal that the disability certificate (Ex.P-1) dated 13.07.2001 was introduced on record during the testimony of the claim appearing as PW2 on 14.01.2002. Noticeably, the then counsel for the appellant was present, when the said testimony of PW2 was recorded and did not object to the

document being proved by the claimant himself. Even during the part cross-examination conducted on the same day, the claimant was not questioned in this regard. The proceedings in the trial court record reveal that on subsequent dates the appellant suffered the proceedings *ex parte* and thus forfeited their right to further cross-examine the claimant. In these circumstances, the evidence of the claimant with regard to the genuineness of the disability certificate, as indeed about his earnings, has gone unrebutted.

8. In the above facts and circumstances, the submissions made by the appellant cannot be accepted.

9. The appeal is, thus, unmerited and is accordingly dismissed.

**R.K. GAUBA
(JUDGE)**

JANUARY 27, 2016/ssc