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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 23rd March, 2016

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MAC.APP. 665/2006

SHRI SANJEEV CHOPRA

..... Appellant

Through: Mr. Ram N. Sharma, Adv.

versus

SHRI ANJAN GUPTA & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellant was driving two wheeler scooter No. DL 75 D 4076 (the scooter) in the area of Sector 62 Noida, District Gautam Budh Nagar, UP, on 04.05.2003 at about 12.30 p.m. when it was involved in a collision against a Maruti car bearing No. DL 1CE 0726 (the car), as a result of which he sustained injuries. He filed a claim petition under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) before the motor accident claims tribunal (the tribunal) on 03.07.2003 seeking compensation, it being registered as Suit No. 148/2003. In the said claim case Anjan Gupta (first respondent) was impleaded as the driver of the car, in addition to Aprajita Malik, (third respondent) she being the owner of the car, in addition to second respondent M/S Tata AIG Insurance Co. Ltd. (insurer), it having

admittedly insured the car against third party risk for the period in question.

2. On the basis of inquiry held, the tribunal, by judgment dated 19.04.2006, granted compensation in the sum of ₹ 2,63,270/- with interest in favour of the claimant directing the insurer to pay.

3. By the appeal at hand, the claimant seeks enhancement in the compensation under the non-pecuniary head of pain & suffering, in addition to questioning the finding recorded that he being the scooterist was guilty of contributory negligence to the extent of 30%, on which account, the compensation awarded was 70% of what was computed to be payable.

4. The tribunal calculated the compensation in the following manner:-

1. Pain &Suffering for two fractures	30,000/-
2. Actual medical expenses	1,13,247/-
3. The special diet and conveyance :	15,000/-
4. The loss of income during the period of treatment from 04.05.03 to 11.05.03 and another operation on 31.10.03 total taken for a period of one year considering tile injuries	63,852/-
5. Future medical unhappiness	50,000/-
6. Expenses on attendant driver talcen for A period of 1 ½ years since there is no permanent disability	54,000/-
7. Future medical expenses &loss of amenities in life	50,000/-
TOTAL	3,76.099/-

8. It was held by the tribunal that the claimant was guilty of contributory negligence. The reasoning for this conclusion is set out mainly in para 7 (c), appearing at internal page 7 of the impugned judgment, which reads thus:

“ In view of the above, I am to answer that the petitioner received injuries consequent to the accident involving offending vehicle but not exclusively due to the rash and negligent act of respondent number 1 since, I find that the petitioner was also responsible to the accident which can be easily gathered from the fact that the PW1 does not describe the manner of accident in his evidence apart from the unwillingness of the petitioner to have asked for the MLC at the initial place of treatment”.

9. This Court finds the reasoning given by the tribunal to be wholly incomprehensible. The conclusion reached by the tribunal, even otherwise, is not borne out from the material on record which may be presently seen.

10. The claimant had placed on record, amongst others, copy of the first information report (FIR) which had been registered by the local police on the date of accident (vide ExPW-1/1). It had been alleged in the said FIR that the accident had occurred due to rash/negligent driving of the car it having hit the scooter. The claimant led evidence by examining himself as PW-1 on the basis of his own affidavit wherein he mentioned the use of the car in negligent manner by its driver to be the cause of collision. During cross-examination, he was called upon to describe the layout of the roads where the collision took place. At that stage, he clarified that the road in question was a wide one with a central divider and further that he was moving on the extreme left side of the road. The car driver Anjan Gupta

(the first respondent) made no attempt to discredit him on this account. He appeared as witness in his defence (as RW1) wherein he attributed negligence to the scooterist stating that he had come at a fast speed, in a zig-zag manner. Noticeably, no such suggestions had been given to the claimant when he was examined as PW-1. In above facts and circumstances, the claimant could not have been found guilty of contributory negligence. The accident thus had occurred due to fault of the car driver and, therefore, compensation assessed by the tribunal had to be paid to the claimant without any deduction.

11. The evidence on record shows that the claimant had suffered multiple fractures. As demonstrated by the medical records relating to treatment, particularly Ex.PW1/6, he had to undergo surgical procedures wherein nails were planted. It is in this view that the tribunal found it necessary to take care of future medical needs as well. In the overall facts and circumstances, award of ₹ 30,000/- under the head of pain & suffering seems to be on the lower side. It is increased to ₹ 60,000/- . The net result is that the compensation would stand enhanced by ₹30,000/-. Needless to add, it shall carry interest as levied by the tribunal.

12. The claimant has already received the compensation as awarded by the tribunal. Since deduction on account of contributory negligence to the extent of 30% was made, and since there is increase in the award by an amount of ₹ 30,000/-, the insurer (the second respondent) will be obliged to pay more. The second respondent (insurer) is, therefore, directed to pay the balance payable in terms of the award modified as above, by depositing

the same with the tribunal within 30 days, whereupon it shall be released to the claimant.

13. The appeal stands disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 23, 2016
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