

\$~R-42

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

Date of Decision: 30th March, 2016

+ **MAC.APP. 418/2007**

HARJEET SINGH

.... Appellant

Through: None

versus

SANJAY & ORS.

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellant (the claimant) suffered injuries in a motor vehicular accident that occurred at about 8.30 PM on 22.07.1996 involving two wheeler scooter bearing registration No.DL 4SN 9967 (scooter) being driven by him in a collision between it and a truck bearing registration No.DEG 1156 (the truck) admittedly driven by the first respondent (R1W1). He got the claim petition registered under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) before the motor accident claims tribunal (tribunal) on 21.08.1996 whereupon it was registered as petition No.157/06. In the said case, besides the driver of the truck (first respondent), its registered owner (Brahm Dutt) and the insurer (New India Insurance Co. Ltd.) were also impleaded as party respondents. Brahm Dutt, the registered owner of the truck having died, by subsequent application his legal heirs were substituted

in his place. The appellant had alleged in the claim case that the accident had occurred due to rash driving of the truck by the first respondent. The case was contested by the first respondent (driver) and the third respondent (insurer), the latter, however, having admitted that it had issued insurance policy against third party risk for the period 02.07.1996 to 01.07.1997 which would cover the date of accident, taking up the defence that its liability was subject to the driver holding a valid or effective driving license.

2. During inquiry, the claimant led evidence by examining himself (as PW1) in addition to Ashutosh (PW2) and Dharampal (PW3), both officials of hospitals where he had remained under treatment besides head constable Mumtaz Ali (PW4) to produce the record relating to FIR No.631/1996 which had been registered by police station Janakpuri about the accident.

3. The driver (first respondent) examined himself (R1W1) on the strength of affidavit (R1W1/1). The insurance company also led evidence by examining Anchint Uppal (R3W1), an Assistant essentially to prove its defence about the driver not having held a valid driving license at the time of the accident. The tribunal further examined Subhash Chander, Motor Licensing Officer (Rajpur Road, Transport Authority, Delhi - court witness No.1) with regard to registration of the offending vehicle.

4. On appraisal of the evidence adduced, the tribunal decided the claim case by judgment dated 05.03.2007 returning a finding that the accident had occurred due to negligence both on the part of the appellant (claimant) and the driver of the truck (first respondent), each having been held liable for contributory negligence to the extent of 50%. The compensation was calculated thus :

(i)	Loss of income (1850 x 6)	Rs.11,100/-
(ii)	Medical expense	Rs.19,988/-
(iii)	Attendant charges	Rs.4,000/-
(iv)	Special diet & conveyance	Rs.5,000/-
(v)	Pain & sufferings	Rs.20,000/-
	Total	Rs.60,088/-
	(rounded off)	Rs.60,000/-

5. The tribunal upheld the plea of the insurer about the breach of terms and conditions of the policy and, thus, while directing the insurer to pay 50% of the aforementioned amount of compensation to the claimant granted recovery rights.

6. The insurer (third respondent) had challenged the impugned judgment dated 05.03.2007 by appeal registered as MAC.APP.337/2007 seeking total exoneration. The said appeal was dismissed by a learned single judge of this Court by judgment dated 06.03.2014.

7. The claimant by the appeal at hand questioned the finding of contributory negligence and also claimed enhancement of the compensation.

8. In spite of the matter being called, no one has been appearing on behalf of the appellant to assist the court in consideration of the appeal. The situation remains the same today, even though caution had been administered by order dated 18.03.2016 that when the appeal is taken up next, it shall be considered on merits notwithstanding non-appearance on the part of the appellant.

9. Having gone through the tribunal's record and the contentions raised in the appeal at hand, this Court finds no substance in the plea that the finding of contributory negligence is erroneous. The tribunal has noted the

evidence including that of the claimant (PW1) and of the driver of the offending vehicle (R1W1). The evidence on record clearly indicated that the appellant was driving the scooter under the influence of alcohol. He did not even possess a driving license and, thus, there is a question mark on his capability to drive safely on the road. The evidence of the truck driver (R1W1) clearly brought out that the collision had taken place with the scooter, as the scooter stuck against the truck from its rear side. In his evidence he conceded the fact that the accident had occurred wherein the rear portion of the truck was involved. In these circumstances, the onus was primarily on the appellant to explain as to how the accident had occurred. In these circumstances, the finding of fact recorded by the tribunal about contributory negligence does not call for any interference.

10. The claimant had pleaded before the tribunal that he was working as a dye-fitter at the time when the accident occurred. His plea that he was earning ₹2700/- per month from M/s Verdi Sons, however, was not substantiated by any cogent proof. Mere production of certificate (Ex.PW1/23) was found to be insufficient proof about such engagement or earnings. This court finds the conclusions reached by the tribunal in this regard appropriate.

11. In the facts and circumstances, the tribunal correctly assessed the income of the appellant on the basis of minimum wages (₹1,843/- per month) payable to a semi-skilled worker at the relevant point of time, rounding it off to ₹1,850/-. There is substance in the submission of the appellant in appeal that his evidence about he having been rendered unable to work for a period of eight months could not have been ignored as the

same had gone un rebutted. The evidence clearly showed that on account of fractures suffered in the lower limbs, rods had been inserted and, therefore, he was required to undergo further surgical procedure in the year 2000. In this view of the matter, the loss of income should have been calculated for a period of eight months, rather than six months only. It is further the contention of the appellant that the award under the head of pain and suffering is deficient. Having regard to the nature of injuries suffered and the prolonged treatment that he had to undergo, there is merit in the said contention as well.

12. For the foregoing reasons, the loss of income is increased by ₹3,700/- and the award under the head of pain and suffering is enhanced by an amount of ₹10,000/-.

13. The total increase in the compensation being in the sum of ₹13,700/- rounded off to ₹14,000/-, the appellant shall be entitled to 50% thereof only in view of the finding of contributory negligence to the extent of 50%. Thus, the appeal is allowed to the effect that the insurer shall pay another sum of ₹7,000/- with interest as levied by the tribunal to the claimant by depositing it with the tribunal within 30 days of this judgment.

14. The appeal is disposed of in above terms.

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

MARCH 30, 2016/VLD