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

Date of Decision: 17th March, 2016

+ **MAC.APP. 595/2012**

LOKESH KUMAR

..... Appellant
Through Mr. H S Gautam, Adv.

versus

VIJAY JINDAL & ORS

..... Respondent
Through Mr. A K Soni, Adv. for insurance

**CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA**

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellant was driving scooter bearing registration No.DL 5S B9654 (the scooter) with his brother Mohit Kumar on the pillion when, at about 6.20 AM on 31.07.2003, he was involved in an accident against motor vehicle described as described as DL 5C K0077 (the offending vehicle) wherein he sustained injuries. He brought a claim petition (suit No.598/2004) under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) before the motor accident claims tribunal (tribunal) seeking compensation. It appears another claim case (No.604/2004) was brought respecting Mohit Kumar. In both the cases, the driver and owner of the offending vehicle were impleaded as respondents, in addition to Oriental

Insurance Company (insurer), as first to third respondents. The tribunal clubbed both for purposes of inquiry and by common judgment dated 04.09.2010 awarded compensation to the appellant in the sum of ₹1,35,000/- with interest, calculating the compensation as under:

<i>Loss of Income</i>	:	<i>Rs. 30,000.00</i>
<i>Medical expenses</i>	:	<i>Rs. 45,000.00</i>
<i>Pain &Suffering</i>	:	<i>Rs. 40,000.00</i>
<i>Special diet</i>	:	<i>Rs. 10,000.00</i>
<i>Conveyance</i>	:	<i>Rs. 10,000.00</i>

<i>Total</i>		<i>Rs. 1,35,000.00</i>

2. The appellant has come up in appeal seeking enhancement, his grievance being two-fold, viz., first that loss of income should have taken into account and second that the surgical procedure undergone from 08.03.2004 to 23.03.2004 showed continued disability for a period of eight months after the accident. His submissions are that he was working as life guard and his avocation has been adversely effected and this aspect has not resulted in any compensation being considered.

3. The tribunal concluded, on the basis of evidence led, that the appellant was in receipt of ₹5,000/- per month from the avocation in which he was engaged. It awarded ₹30,000/- as the loss of income on the assumption that he would have remained away from job for a period of six months. Since the evidence shows that he had to undergo another surgical procedure in March, 2004, it has to be concluded that the inability to work

for gain was for a period of eight months. Thus, ₹10,000/- deserves to be added towards loss of income.

4. There is, however, no proof of any permanent disability suffered. In these circumstances it cannot be inferred that the avocation in which the appellant has been engaged has been adversely affected. There is no good ground shown to make any further improvement in the compensation.

5. The appeal is partly allowed to the effect that the compensation shall stand increased by ₹10,000/-. Needless to add, it shall carry interest as levied by the tribunal. The insurance company shall deposit the enhanced portion with proportionate interest with the tribunal within 30 days whereupon it shall be released.

6. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 17, 2016/VLD