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

Date of Decision: 02nd May, 2016

+ **MAC.APP. 468/2007 and CM No.10381/2007, 10382/2007 and CM No.582/2009**

DELHI JAL BOARD AND ANR.

..... Appellants

Through: None

versus

RAKESH TRIPATHI

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The respondent (claimant) was riding motorcycle No.DL 7S W 7624 (the motorcycle) on 02.11.2004 when it was involved in a collision with water tanker No.DL 1M 0273 (water tanker) at Mukundpur Crossing, outer Ring Road, Delhi. As a result of the collision, the claimant fell down and suffered injuries. The water tanker was admittedly driven at the relevant point of time by the second appellant, he being an employee of Delhi Jal Board (DJB) which is the registered owner. The claimant instituted an accident claim case (petition No.159/05) on 02.06.2005 seeking compensation under Sections 166 & 140 of Motor Vehicles Act (MV Act) impleading both the appellants as respondents.

2. The tribunal held inquiry during which it was alleged by the claimant that the accident had occurred because of negligent driving at shooting speed of the water tanker. On the other hand, it was contended by the appellants that the claimant himself had been negligent as he had jumped red light at fast speed and lost balance in the process resulting in injuries being suffered.

3. During inquiry on the issue of negligence, the claimant appeared as his own witness (PW1) while the appellants examined the second appellant (R2W1) to prove facts to the contrary. The tribunal by judgment dated 07.09.2006 upheld the case of both sides finding each driver to be guilty of contributory negligence though apportioning the blame onto the claimant to the extent of 20%. It assessed compensation to the extent of ₹2,30,500/-, calculated thus :

i)	Reimbursement on medical expenses	5,000/-
ii)	Pain & suffering	45,000/-
iii)	Loss of income	10,500/-
iv)	Loss of earning capacity	1,00,000/-
v)	Permanent disability	50,000/-
vi)	Conveyance/ attendant charges	10,000/-
vii)	Future Medical treatment	10,000/-

	Total compensation	2,30,500/-

4. The appellants were, thus, held liable jointly and severally to pay 80% of the above mentioned amount with interest from the date of filing of the petition till realization.

5. By this appeal, the finding in the impugned judgment on the question of negligence and also the computation of award was challenged. However,

at the hearing no one has appeared to argue on the either side. The situation was the same as far as appellant is concerned even on the preceding date.

6. Having perused the tribunal's record, this Court finds the appeal to be unmerited. The tribunal has considered the evidence on both sides and has given detailed reasons for finding that drivers of both sides were negligent. It is found that while the motorcyclist was moving at unduly fast speed, he having skidded and fallen after applying breaks, there was guilt on the part of the driver of the water tanker as well since he had jumped red light and had been moving at rash speed. In the facts and circumstances, this Court is not inclined to interfere with the finding on the issue of negligence and the apportionment of responsibility on such account.

7. The issues raised in the appeal with regard to the quantum of compensation are found to be devoid of substance. The tribunal has noted the extent of injuries suffered by the claimant, which included fracture of lateral tibia condyle with fracture of metaphys diaphysel (tibial head of left leg). This undoubtedly would have required prolonged treatment. In these circumstances, the assessment made by the tribunal under various heads of compensation cannot be grudged.

8. The appeal is unmerited and liable to be dismissed.

9. By order dated 03.08.2007, the operation of the impugned award was stayed. The stay is now vacated. The appeal (with accompanying applications) is dismissed.

10. The appellants are directed to satisfy the award by requisite deposit with the tribunal. The statutory deposit, if made, shall be refunded by the registry only after award has been satisfied.

R.K. GAUBA
(JUDGE)

MAY 02, 2016/VLD

