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

Date of Decision: 11th May, 2016

+ **MAC.APP. 530/2007**

RAJEEV BHATNAGAR

..... Appellant

Through: Mr. Hari Narayan Takkar & Mr.
Aditya Vikram, Advs.

versus

JASWANT SINGH & ORS.

..... Respondents

Through: Ms. Arati Mahajan Shedha, Adv. for
R-3.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellant had suffered injuries in a motor vehicular accident that occurred on 31.08.1995 statedly on account of negligent driving of a motor vehicle described as bearing registration no.DL-1P-3356 (the offending vehicle). He instituted an accident claim case (suit no.780/2006, old no.775/1996) before the motor accident claims tribunal (the tribunal) on 17.09.1996 seeking compensation under Sections 166 & 140 of the Motor Vehicles Act, 1988 (the MV Act). Initially, the claimant had impleaded the first and second respondents as the parties to the claim petition on the averments that the accident had been caused due to negligent driving of the

offending vehicle by the first respondent, the vehicle being registered in the name of second respondent. By amendment carried out later, Delhi Transport Corporation (DTC), third respondent in the appeal, was also added as a party on the averments that the offending vehicle was driven at the relevant point of time under its control. It may be added at this stage that this contention *qua* DTC, however, could not be proved and, thus, at the conclusion of the inquiry before the tribunal, no liability was fastened against the said party respondent (DTC).

2. The first and second respondents, though served by publication, did not participate in the inquiry before the tribunal. They had been set *ex parte* by order dated 28.08.2000. The tribunal held inquiry with only DTC contesting. At the conclusion of the inquiry, the tribunal passed the judgment/award on 09.02.2007 upholding the case of the claimant that he had suffered injuries due to the accident caused by negligent driving of the offending vehicle by the first respondent. The compensation in the total sum of ₹48,800/- was awarded with interest at the rate of 9% per annum in favour of the claimant with both first and second respondents having been found “jointly and severally liable”, though in the operative part of the judgment, the tribunal directed only the first respondent to deposit the awarded amount with interest.

3. The appellant, feeling aggrieved with the quantum of compensation awarded, preferred the appeal at hand seeking enhancement. His prime contention is that the income on which account he had suffered loss has not been properly assessed or computed. He also submits that he had suffered deformity which had rendered him partially (permanently) disabled which

would also affect functional/earning capacity that requires to be compensated. He further submits that the awards under the non-pecuniary heads of damages are also inadequate.

4. The respondents were duly served in the appeal. It was, however, brought on record that the second respondent has since died. The first respondent appeared on some of the dates of hearing through counsel. At the final hearing of the appeal, however, there is no appearance on his behalf.

5. At the hearing, it was pointed out by the counsel for the appellant himself that the first respondent Jaswant Singh had moved an application seeking setting aside of the *ex parte* order dated 28.08.2000 invoking provision contained in Order 9 Rule-13 of the Code of Civil Procedure, 1908 (CPC), *inter-alia*, contending that no summons had been received and knowledge about proceedings came only upon receipt of the notice of the appeal at hand. The said application was entertained by the tribunal by notice being issued to the appellant (the claimant) by order dated 05.02.2008. On 06.02.2008, the learned counsel for the said party (Jaswant Singh) appearing before this court in the appeal at hand brought the fact of pendency of the said application before the tribunal to the notice of this court, seeking adjournment for some time which request was granted. The hearing on the appeal was adjourned again by order dated 07.05.2008 on similar submissions being made. It is noted from the tribunal's record that on 18.09.2008, the application under Order 9 Rule-13CPC moved on 02.02.2008 was dismissed as withdrawn and in its place another application again under Order 9 Rule-13 CPC submitted on 17.09.2008 was pressed, in

which it has been contended additionally that the offending vehicle had been sold on 25.11.2003 to one S.K. Parshad. The tribunal issued notice on this fresh application requiring the appellant to submit his response, the matter having been adjourned for such purposes to 10.12.2008. Meanwhile, on 18.11.2008 the fact of pendency of this application under Order 9 Rule-13 CPC was brought to the notice of this court whereupon the tribunal was directed to dispose of the same within four months of the said order. It appears that the tribunal's record was requisitioned by order dated 07.01.2009 and, thus, the application under Order 9 Rule-13 CPC has remained pending on the file of the tribunal.

6. Against the above backdrop, the learned counsel for the appellant submits that he is under instructions to withdraw the present appeal and to appear before the tribunal with submissions to be made to the effect that the application under Order 9 Rule-13 CPC is not contested, so that the matter arising out of his claim petition may be properly adjudicated by further inquiry in which the claimant would also have the liberty to adduce further evidence, in addition to the evidence already adduced, in support of his claim for higher compensation than the amount as awarded by the impugned judgment.

7. In above view, the prayer is granted. The appeal is dismissed as withdrawn with liberty granted to the appellant to appear before the tribunal in the context of the pending application under Order 9 Rule-13 CPC of the first respondent and make appropriate prayer before it. Needless to add, upon no objection being submitted by the appellant, the tribunal shall direct the inquiry into the claim petition to be reopened and also permit the

appellant to make further prayers including for purpose of adducing additional evidence in support of his claim for compensation. Needless to add, the evidence already adduced during earlier inquiry shall also be available to the claimant for seeking appropriate relief.

8. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 11, 2016
ssc

