

\$~R-67

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

Date of Decision: 05th May, 2016

+ **MAC.APP. 521/2007**

KUNAL ARORA

..... Appellant

Through: None.

versus

ANIL KUMAR & ORS.

..... Respondents

Through: Mr. P. Acharya, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellant, then aged 16 years, was riding on the pillion of two wheeler scooter bearing registration no.DL-8SR-2076 (the scooter) driven by one Karan Kumar, on 26.02.2004 when it was involved in a collision with vehicle described as Tata-407 bearing registration no.DL-1LB-0140 (the offending vehicle). As a result of the collision, he suffered injuries including two fractures and head injuries which required indoor treatment in medical facilities including Max Health Care Hospital. An accident claim case (suit no.294/2006) was filed on his behalf on 19.08.2004. The first and second respondent herein were impleaded in the claim petition on the ground that they were driver and owner respectively of the offending vehicle. In addition, United Insurance Company (third respondent) was

impleaded, it being admittedly the insurer which had issued third party risk insurance policy in respect of the offending vehicle for the period in question.

2. In the claim case, it was alleged that the accident had occurred due to negligent driving of the offending vehicle. The tribunal held inquiry wherein all the respondents contested, the driver and the owner of the offending vehicle taking the position that the scooterist was responsible as he had jumped traffic lights. The tribunal held that the accident had occurred due to negligence both on the part of scooter driver and driver of the offending vehicle apportioning the liability equally amongst them. It awarded total compensation of ₹30,000/- and on account of finding returned about contributory negligence directed the insurer to pay only ₹15,000/- with interest to the appellant (the claimant).

3. By the appeal at hand, the finding about the contributory negligence was challenged. In addition, the claimant has submitted that the award is inadequate; the medical expenditure having been wrongly denied with reference to medi-claim policy; no award having been made for the loss of studies on account of hospitalization for a period of six months and award of ₹20,000/- only towards pain & suffering and ₹10,000/- on account of loss of amenities being inadequate, there being no provision made for expenses on account of conveyance and special diet.

4. This appeal was admitted by order dated 21.07.2011. When the matter is called out, no one would appear for appellant/claimant. This was

the state of affairs even on the last date of hearing. Given the old pendency, there is no reason why the hearing should be deferred yet again.

5. Having heard the counsel for the insurance company who is present on the side of the respondents and, having perused the record, this court finds the grievances raised by the appellant on issue of contributory negligence to be correct.

6. This court is not inclined to uphold the finding returned by the tribunal about negligence on the part of the scooter driver in the face of evidence adduced. The scooter was stationary waiting for taking a u-turn. It was at that stage that the offending vehicle came and hit against it. The fact that the scooter was stationary itself shows that it is the driver of the offending vehicle who has to primarily explain as to why he could not control his vehicle so as to avoid collision. Noticeably, the driver of the offending vehicle was not examined even at the instance of the insurer. In these circumstances, the finding of contributory negligence is set aside. It is held that the insurer would be liable to pay the compensation as assessed.

7. The appellant had led evidence to prove that the injuries suffered by him included those in the head region and two fractures. He had undergone in-door treatment in three hospitals, one after the other, incurring expenditure including on the diagnostic procedures. The documents show the total expenditure of ₹1,35,248/- (Ex.PW1/2). The tribunal denied him the award on that account on the ground that the claimant had admitted that he was covered by a medi-claim policy. It is the contention raised in the appeal that the medi-claim policy was taken later. Even if it were to be

assumed that a medi-claim policy was in existence and operative at the time of the cause of action, the omission to avail benefit under such policy would not mean that the claim on such account before the motor accident claims tribunal is to be defeated. The view taken by the tribunal cannot be approved of.

8. It is true that the claimant was only 16 years old person. But he has proved that his life had remained frozen for a period of six months on account of injuries and the treatment required to be undertaken in their wake. He has to be compensated for the loss of those six precious months. It is true that he was not working for gain but it is possible to compensate him by computing the loss on basis of minimum wages payable at that point of time. The accident had occurred on 26.02.2004 and the rate of monthly minimum wages of an unskilled worker at that point of time was ₹2852.90. The compensation for the period of six months thus comes to (2852.90x6) ₹17,178/-, rounded off to ₹18,000/-.

9. There is merit in the contention in the appeal that award should also have been made on account of conveyance and special diet. Having regard to the nature of injuries and period of treatment, an amount of ₹20,000/- under the said head is added. There being no disability shown suffered, there is no scope for further improvement under other heads.

10. Thus, the total compensation payable in the case comes to (20,000+1,35,248+10,000+18000) ₹1,83,248/-, rounded off to ₹1,85,000/-.

11. It is also the grievance of the appellant in the appeal that the rate of interest 7.5% per annum levied by the tribunal is unduly low. Following the

consistent view taken by this Court [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*], the rate of interest is increased to 9% per annum from the date of filing of the petition till realization.

12. The award is modified as above.

13. In view of the finding on issue of negligence as recorded above, the insurer shall be obliged to pay the balance of the compensation payable under the modified award to the claimant by requisite deposit with the tribunal with 30 days.

14. The appeal is disposed of in above terms.

MAY 05, 2016
ssc

R.K. GAUBA
(JUDGE)

