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

**Date of Decision: 23.05.2016**

+ **MAC.APP. 628/2007**

**STATE OF HARYANA & ANR.**

**..... Appellants**

Through: **None.**

versus

**MOHD. KALIA & ORS.**

**..... Respondents**

Through: **None.**

**CORAM:**

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

**JUDGMENT**

**R.K.GAUBA, J (ORAL):**

1. On 04.11.2005, the second respondent was driving motorcycle bearing No. DL 3SL 0162 (the motorcycle) with the first respondent sitting on the pillion. Both suffered injuries in a motor vehicular accident involving the said motorcycle at about 6 p.m. near interstate bus terminus (ISBT) close to Nigam Bodh Ghat, Delhi. They filed accident claim cases (suit Nos. 37/2006 & 38/2006) on 01.12.2005 impleading Haryana Roadways (the appellant) as one of the respondents. The other respondent Karamvir Singh (third respondent in appeal) being its employee (driver), seeking compensation under Sections 140 & 166 of Motor Vehicles Act (MV Act) on the averment that the accident had occurred on account of bus bearing

registration No. HR 55B 3246 (the bus) of the appellant having been driven in a negligent manner causing collision against the motorcycle.

2. The tribunal clubbed both the claim cases and held inquiry and, by common judgment dated 09.02.2007, upheld the case of the claimants that they had suffered injuries due to negligent driving of the bus. Compensation in the sum of ₹ 1,91,500/- was awarded in favour of the first respondent and ₹ 38,400/- in favour of the second respondent. The appellant was directed to pay the said amount of compensation to the two claimants with interest from the date(s) of filing of the petition(s) till realization.

3. The appeal was filed challenging the finding on the issue of negligence, the contention primarily being that the accident had occurred due to negligence of the motorcyclist. Additionally, the appeal also challenged the awards of compensation stating the same are excessive and exorbitant.

4. By order dated 21.04.2010, the appeal was directed to be shown in the category of finals for arguments and disposal at its own turn. When the appeal has been taken up, no one has been appearing over the last several dates of hearing. Given the fact that this appeal is the oldest on the board, there is no good reason why hearing should be deferred yet again.

5. Record has been perused and the contentions urged in appeal are considered.

6. On the issue of negligence, both the claimants had appeared as witnesses (PW-3 and PW-4) affirming facts about the sequence of events. It came in their testimony that the accident occurred when the motorcycle was

taking a U-turn and the bus, having come at rash speed, had hit it from behind. Though the third respondent (driver of the bus) also appeared as witness (R1W1) and claimed that when the bus, having undertaken the journey from Patiala to Delhi, had reached the place of occurrence, he had noticed that some vehicle had slipped/skidded on the road resulting in the two persons travelling on it falling down and sustaining injuries. But, during cross-examination, he admitted that there was actually a collision with the bus and that the motorcycle had not slipped as stated by him during his examination in chief. Taking note of this contradiction of great import in the version of the driver of the bus, the tribunal proceeded to accept the version of PW-3 and 4 and on that basis returned a finding of negligence against the bus driver.

7. This Court finds no error in the view taken by the tribunal and, therefore, the finding on the issue of negligence is affirmed.

8. The tribunal found, on the basis of scrutiny of evidence adduced, that the first respondent had suffered multiple fractures in his right leg, besides other injuries. As a result of the grievous hurt in the right leg, he had developed bony deformity, his disability having been proved by medical opinion to be to the extent of 15% in the right lower limb on account of shortening of leg by 1 inches. The tribunal did not accept the oral word of the claimant that he was earning ₹ 5,000/- per month as a tailor. Instead, minimum wages of unskilled worker was adopted as the benchmark. It having been proved before the tribunal that the claimant was unable to work for gain on account of injuries for a period of four months, loss of income for the said period was granted besides loss of future income on account of

permanent physical disability to the extent of 15%. The tribunal added ₹ 30,000 on account of pain & suffering, ₹ 25,000/- towards loss of amenities of life and ₹ 20,000/- as general damages which was meant to cover expenditure on future treatment as well.

9. The appeal questions the award over loss of income on the ground that the view taken by the tribunal was inherently contradictory as it has also observed that no evidence had been adduced with regard to income, employment, education or training as a tailor. The objection is without substance as the tribunal proceeded to assess the loss of income for the period of treatment and in future notionally, on minimum wages of an unskilled worker, it having rejected the claim of income at ₹ 5,000/- per month.

10. Having regard to the nature of injuries and the permanent disability consequently suffered by the first claimant, the non-pecuniary damages awarded by the tribunal cannot be said to be exorbitant.

11. In the case of the second claimant, similarly, the tribunal did not accept the oral word that he was earning ₹ 5,000/- per month as scooter mechanic. The income loss for the period of two months of treatment was compensated on the income notionally assessed at the rate of minimum wages for unskilled workers. It is noted that even this claimant (second respondent) had suffered grievous hurt in the form of fracture of clavicle bone besides bleeding injuries suffered in the right ear and left knee. In this view, the non-pecuniary damages in the sum of ₹ 20,000/- on account of pain &

suffering and ₹ 12,000/- as lumpsum general damages cannot be said to be excessive.

12. Thus, the appeal is found to be unmerited and dismissed.

13. It was submitted on 21.04.2010 that the awarded amounts had been deposited with the tribunal by the appellant. If the amounts have not been released thus far, the same shall now be released to the claimants in terms of the impugned judgment.

14. Statutory deposit, if made, shall be refunded after the registry has confirmed that the awards has been satisfied.

**MAY 23, 2016**  
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**R.K. GAUBA**  
**(JUDGE)**

