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

Date of Decision: 10th May, 2016

\+ **MAC.APP. 10/2010 with CM no. 619/2010**

RAJIV MITTAL ..... Appellant

Through: Mr. Sachin Midha, Mr. Karthik K. R. & Mr. Iggu Chittiappa, Advs.

versus

DAYA NAND VERMA & ANR ..... Respondents

Through: Mr. S. N. Parashar, Adv. for respondents/claimants.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On his claim petition (suit no.118/2008), instituted on 13.02.2007, the motor accident claims tribunal (the tribunal) by judgment dated 20.08.2009 awarded compensation in the sum of ₹4,65,995/- with interest in favour of the first respondent for injuries suffered by him in a motor vehicular accident that occurred on 28.09.2006 involving the motor vehicle described as scooter bearing registration no.DL-8SAE-4107 (the offending vehicle). It was proved during inquiry before the tribunal that the offending vehicle is owned by the appellant who was impleaded as second respondent in the proceedings before the tribunal, in addition to Pramod Kumar (first respondent), the latter described as the driver on account of whose negligent driving the accident had occurred. The tribunal awarded compensation

which included ₹3,33,850/- as loss of earning capacity, this having been calculated on the multiplier of 14, upon the calculation that the claimant was 44 years old on the date of accident and further that he had suffered loss of 40% earning capacity, it having been proved through testimony of Dr. Sanjay Kumar (PW2) that injuries suffered had resulted in permanent disability to the extent of 63% in relation to the right lower limb.

2. The appellant, being the owner of the offending vehicle, was held jointly and severally liable (with the driver) to pay the compensation (with the driver), the offending vehicle not having been covered by any third party insurance policy for the period in question.

3. When the appeal was presented and entertained on 15.01.2010, it was submitted on behalf of the appellant that the only ground pressed is to the effect that the claimants age was wrongly taken as 44 years, it actually being 60 years at the time of the accident and, therefore, the loss of future earning should have been calculated on the multiplier of 9.

4. Having heard the learned counsel for appellant and having gone through the tribunal's record, the submission made in the appeal is found to be unmerited. The tribunal has considered the evidence on record with regard to the age of the claimant and concluded his year of birth as 1962, it having been so reflected in the copy of the ration card which was submitted as part of material for consideration. Some confusion had arisen because of different age being reflected in different documents pertaining to the medical treatment. But, there is no reason why the age noted in the medical records should be preferred as a better proof as against the ration card which

would have been prepared and issued by the concerned Food and Supplies Department of Government after due inquiry.

5. In above view, the appeal is devoid of any substance and consequently dismissed.

6. By order dated 15.01.2010, the appellant had been directed to deposit ₹3,50,000/- with interest from the date of filing of the petition till realization subject to which the execution of the impugned award was stayed. Initially, it was directed that the amount to be thus deposited shall be retained in fixed deposit till order of the disbursement was passed after appearance of the claimant to whom notice had been issued. On 17.02.2010, it was submitted before the court by the counsel for the appellant that he would be depositing ₹2,00,000/- with UCO Bank within 2 days and remainder in terms of the earlier orders within 3 weeks. By order dated 18.05.2010, it was directed that the amount already deposited be released in favour of the claimant. The appellant informed the court on that date that he would be depositing ₹2,00,000/- by 31.05.2010. It was noted on 31.05.2010 that only half of the awarded amount had been deposited. The court directed the appellant to deposit the remaining half by 14.07.2010 whereupon it was to be kept in fixed deposit. On 22.10.2013, the counsel for the appellant again submitted that only ₹2,00,000/- had been deposited and there was default with regard to the balance in terms of the interim order. Liberty was granted to deposit the balance within 3 days of the said order. On 19.05.2014, the claimants informed the court that the interest part of the amount had not been deposited. The appellant took adjournment to seek instructions. On 18.09.2014, it was found that the order dated 15.01.2010 had still not been

complied with. It was submitted on behalf of appellant that the payment would be made once calculation about the interest had been provided. The court observed that this was unacceptable and the submissions made were only excuses being held out. On 16.10.2014, the appellant produced a demand draft of ₹8025/- which was found to be not in compliance with the order dated 22.10.2013. Inspite of the directions, the appellant would not appear. Consequently, by order dated 16.10.2014, the interim stay was vacated.

7. In above facts and circumstances, the appeal is dismissed with a cost of ₹50,000/-. The cost shall also be recoverable alongwith the balance of the liability of the appellant. The appellant is directed to deposit the balance of his liability under the impugned judgment alongwith the cost imposed by this court with the tribunal within 30 days, failing which the claimant shall be at liberty to enforce the same by appropriate application before the tribunal. Given the past conduct of the appellant, it is directed that in case above direction is not complied with, the rate of interest shall stand enhanced at the rate of 12% per annum after the elapse of 30 days. The amount lying in deposit with UCO bank, Delhi High Court, New Delhi shall be released to the claimant towards part satisfaction of the award.

8. The appeal (with application) is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 10, 2016/ssc