

\$~R-158

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

Decided on: 05th September, 2017

+ **MAC APPEAL 37/2010**

MASTER BALJIT

..... Appellant

Through: None

versus

MANOJ KUMAR DASS & ORS.

..... Respondents

Through: Mr. Pradeep Gaur and Mr. Amit
Gaur, Adv. for R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant, then a child aged 9 years, suffered injuries in a motor vehicular accident that occurred on 09.10.2005 due to the negligent driving of a vehicle bearing registration no.HR-38H-9914 and suffered injuries, they having been described as degloving injury of left foot and sole and injury to underlying muscles and tendons with bone exposed besides abrasions over sole of right foot. The accident claim case (suit no.137/2007) was instituted on his behalf and prosecuted by his father seeking compensation.

2. The Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 31.07.2008, held that the injuries have been suffered due to the negligent driving of the aforementioned vehicle. It awarded compensation in the total sum of Rs.1,30,000/-, directing the third respondent concededly the insurer against third party risk of the

vehicle in question to pay with interest at the rate of 7.5% p.a., calculating it thus :-

Future medical treatment	Rs.30,000/-
Medicines & treatment	Rs.15,000/-
Pain and suffering	Rs.75,000/-
Conveyance and special diet	Rs.10,000/-
Total	Rs.1,30,000/-

3. Feeling aggrieved with the award, the appeal at hand was filed seeking enhancement. The appeal was admitted and directed to be shown in the list of 'Regulars'. At the hearing, however, no one has appeared on behalf of the appellant to assist. The learned counsel for the third respondent (insurer) has been heard and the record of the tribunal has been perused.

4. It appears that the tribunal has fallen into error by not making any award for the loss of studies that would have been incurred due to the injuries suffered and the prolonged treatment that had to be undertaken. It is clear from the evidence of Dr. Arun Goel (PW-4), senior Plastic Surgeon of Lok Nayak Hospital where the treatment was undertaken that the appellant had to undergo a number of surgical procedures, the treatment continuing for over two years. The accident having occurred on 09.10.2005, the treatment had continued till 29.10.2007 to which the OPD card (PW4/E) relates. During this period, efforts were made for skin grafting. Having regard to these facts, it cannot be denied that the life of the claimant has been pushed back by at least two years.

5. In these circumstances, compensation deserves to be granted for the period of quality life last for two years. This can be calculated with the help of minimum wages (Rs.3165.90), rounded off to Rs.3,166/-. Calculated thus, an amount of [Rs.3,166/- x 24] Rs.75,984/-, rounded off to Rs.76,000/- (Rupees Seventy six thousand) deserves to be added to the compensation.

6. Given the nature of the injuries suffered, and the prolonged treatment undergone, award under the head of pain and suffering at Rs.75,000/- is also on the lower side. It is increased to Rs.1,50,000/-.

7. Thus, there would be a total enhancement in the award by [Rs.76,000/- + Rs.75,000/-] Rs.1,51,000/- (Rupees One Lakh and fifty one thousand only). Ordered accordingly.

8. It is directed that the entire enhanced portion of the award shall carry interest at the rate of 9% p.a. from the date of filing of the petition till payment. The third respondent /insurer is directed to satisfy the enhanced award by requisite deposit with the tribunal within 30 days. Upon such deposit being made, the amount shall be released to the appellant in the form of a fixed deposit receipt in a nationalized bank taken out for a period of seven years with right to draw monthly interest.

9. Needless to add, the recovery rights granted to the insurance are not disturbed.

10. The appeal is disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 05, 2017

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