

\$~R-296 & 297

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

Decided on: 10th October, 2017

+ **MAC APPEAL 97/2011**

BABY KOTIL

..... Appellant

Through: Mr. Navneet Goyal, Advocate

versus

CHARAN SINGH & ORS.

..... Respondents

Through: Mr. Kanwal Chaudhary, Adv
for R-3.

+ **MAC APPEAL 98/2011 and CM 17560/2011**

DHEERAJ KUMAR JATAV

..... Appellant

Through: Mr. Navneet Goyal, Advocate

versus

CHARAN SINGH & ORS.

..... Respondents

Through: Mr. Kanwal Chaudhary, Adv.
for R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellants in these two appeals arising out of the same motor vehicular accident are cousins. While Dheeraj Kumar Jatav (appellant in MACA 98/2011) was 15 years old and riding the bicycle, Kotil (appellant in MACA 97/2011) was his cousin sister, aged 9 years, riding on the pillion of the said bicycle. On 25.09.2005 at about

4.30 p.m. in the area of Main Road Bus Stand, Khera Khurd, Delhi, their bicycle was hit by a truck bearing registration no.RJ-02-G-6059 (truck) causing grievous injuries to both of them, such injuries including fractured pelvic bones in the case of the girl child, she also having suffered damage to her colon and urinary bladder system.

2. Two separate accident claim cases were instituted seeking compensation on their behalf, petition no.214/2010 for and on behalf of Dheeraj Kumar Jatav and petition no.213/2010 for and on behalf of Kotil. Both the claim cases were subjected to inquiry and decided by similar judgments passed by the Motor Accident Claims Tribunal (Tribunal) on 06.08.2010. In each case, the driver and owner of the truck were held responsible, it having been found that the accident had occurred due to negligent driving of the truck.

3. In the case of Dheeraj Kumar Jatav, compensation in the total sum of Rs.61,000/- was granted, it having been calculated thus :-

Pain and suffering	Rs.50,000/-
Medicines	Rs.3,000/-
Conveyance	Rs.3,000/-
Loss of amenities	Rs.5,000/-
Total	Rs.61,000/-

4. In the case of Kotil, compensation in the total sum of Rs.3,71,616/-was awarded, it having been calculated as under :-

Pain and suffering	Rs.1,00,000/-
Temporary Disability	Rs.1,00,000/-
Loss of Amenities	Rs.50,000/-
Medicines	Rs.49,616/-
Special Diet	Rs.25,000/-
Conveyance	Rs.10,000/-
Future treatment	Rs.25,000/-
Attendant charges	Rs.12,000/-
Total	Rs.3,71,616/-

5. The appeals filed by each claimant seeks enhancement. They are pressed at the hearing by their counsel only to submit that the awards under the heads of pain and suffering and loss of amenities of life are inadequate in each case.

6. It is noted that in the case of Dheeraj Kumar Jatav, the child had to suffer fracture of pelvis and also of the femur bone and had to undergo two surgical procedures, the treatment having continued for about a year. In the case of the girl child Kotil, the damage was more extensive, her urinary system having been damaged. She had to undergo several surgical procedures, the treatment having continued for almost three years. Though at some stage, effort was made to prove that she had been rendered permanently disabled but the opinion taken from a board of doctors of BJRM Hospital, Jahangir Puri, Delhi confirmed that, mercifully, the child has escaped any permanent handicap. Be that as it may, the grievances about inadequacy of non-

pecuniary damages under the heads of pain and suffering and loss of amenities are found to be correct.

7. In the above facts and circumstances, the compensation under the heads of pain and suffering and loss of amenities of life in the case of Dheeraj Kumar Jatav is increased to Rs.1,50,000/- (Rupees One lakh fifty thousand) and Rs.50,000/- (Rupees fifty thousand) respectively. In the case of Kotil, such awards are increased to Rs.3,00,000/- (Rupees three lakh) and Rs.1,00,000/- (Rupees one lakh) each respectively.

8. In the result, there shall be a net increase in the compensation awarded in favour of Dheeraj Kumar Jatav by Rs.1,45,000/- (Rupees One lakh and forty five thousand) while in the case of Kotil, compensation will stand increased by Rs.2,50,000/- (Rupees two lakh and fifty thousand). The modified awards shall carry interest as levied by the tribunal.

9. The insurer is directed to satisfy the enhanced awards by requisite deposits with the tribunal within 30 days in each case making it available to be released to the respective claimants.

10. It is made clear that this judgment does not affect recovery rights already granted in favour of the insurer.

11. The appeals and the pending application are disposed of in above terms.

R.K.GAUBA, J.

OCTOBER 10, 2017

yg