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

Decided on: 11th October, 2017

\+ MAC APPEAL No. 319/2011

SANDEEP KUMAR ..... Appellant

Through: None.

versus

RAJ SINGH & ORS. ..... Respondents

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

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

JUDGMENT (ORAL)

1. The appellant then aged 12 years, suffered injuries in motor vehicular accident that occurred on 30.04.2002 due to negligent driving of truck bearing registration no. HR 14 3221, it admittedly insured against third party risk with the third respondent (insurer) for the period in question. On his accident claim case (MACP 847/02/08) instituted on 28.11.2002, the Tribunal held inquiry and, by judgment dated 22.11.2010, granted compensation in the total sum of Rs. 90,000/-, the said amount inclusive of Rs. 30,000/- towards pain & suffering, Rs. 20,000/- for loss of amenities of life, Rs. 5,000/- each towards special diet and conveyance and Rs. 30,000/- for medicines. The insurer was directed to pay the said amount with interest @ 7.5%

per annum though the said levy of interest being restricted to a period of four years only.

2. The appeal at hand was filed on behalf of the claimant seeking enhancement of compensation, *inter alia*, on the grounds that the Tribunal had not considered the fact that he had suffered disability to the extent of 40% of the right lower limb; appropriate amount had not been awarded towards conveyance and special diet; the disability was continuing even after nine years which had not been properly evaluated; and that the grant of interest being restricted to only four years was unjust.

3. The appeal was put in the category of 'regulars' as per order dated 23.07.2012. Thereafter it was taken up before the *lok adalat* in an effort to find amicable resolution but with no result. When it is taken up for hearing there is no appearance on behalf of the appellant. The matter has been heard with the assistance of learned counsel for the third respondent (insurer) and by perusal of the Tribunal's record.

4. The claimant had undoubtedly suffered grievous injury in the right lower limb. But then, the disability suffered by him was temporary, this being brought on record by the disability certificate (Ex.PW-2/A) issued on 17.09.2004 by Dr. Gaurav Mishra (PW-2) who was a member of the board. The evidence of the said witness would also show that the claimant had refused to undergo further treatment. The record further reveals that claimant never went for any fresh evaluation of the disability, the disability certificate dated 17.09.2004 being temporary, such assessment being valid only for a

period of three years. In these circumstances, the case cannot be treated as one of permanent disability so as to result in award on such considerations.

5. However, it cannot be ignored that the accident having occurred on 30.04.2002, the evidence led including that of Dr. Gaurav Mishra (PW-2) and Dr. Ajay Singh Pundir (PW-3) would show that the condition of the claimant had not improved till 17.09.2004 and the disability then persisting was not expected to abate at least for three years. In these circumstances, it has been proved on record that the claimant had been rendered disabled to the extent of 40% at least for a period of five years. Taking note of the fact that on the date of accident, the claimant was 12 years' old, he would be expected, in normal course to become an earning hand upon turning major. Therefore, the loss of earning capacity due to disability for a period of five years may be calculated with the minimum wages (Rs. 3,633) payable around the time he would have turned major, his life having been pushed back to such an extent. Loss of earning due to disability factor is, thus, computed as (3633 x 40 ÷ 100 x 12 x 5) Rs. 87,192/-, rounded off to Rs. 88,000/. The awards under the other heads of damages, however, do not call for any interference.

6. The compensation is thus increased by Rs. 88,000/- (rupees eighty eight thousand only).

7. In cases of this nature, the claimants, particularly those coming from the marginal sections of society find it difficult to muster evidence. In these circumstances, the denial of the interest except for

a period of four years by the Tribunal was incorrect and unfair. The impugned judgment is further modified so as to now direct the insurer to pay interest at the rate levied by the Tribunal on the modified award for the entire period i.e. from the date of filing of the claim petition till date of payment.

8. The insurer shall make the requisite deposit with the Tribunal within thirty days whereupon it shall be released to the claimant.

9. The appeal is disposed of in above terms.

10. This does not affect the recovery rights.

R.K.GAUBA, J.

OCTOBER 11, 2017
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