* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: March 23, 2017

(i) + **MAC.APP. 304/2008**

VINOD KUMAR TANDON ..... Appellant

Through: Mr. S.N. Parashar, Advocate

versus

PREM SINGH & ORS. .....Respondents

Through: Mr. Kanwal Chaudhary, Advocate for respondent No.2

(ii) + **MAC.APP. 240/2009**

NEW INDIA ASSURANCE CO.LTD. ..... Appellant

Through: Mr. Kanwal Chaudhary, Advocate

versus

VINOD KUMAR TANDON & ORS. .....Respondents

Through: Mr. S.N. Parashar, Advocate for respondent-claimant

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

% **ORAL**

Vide impugned Award of 11th December, 2007, Motor Accident Claims Tribunal, New Delhi *(hereinafter referred to as 'Tribunal')* has granted compensation of ₹6,24,370/- with interest @ 9% *per annum* on account of injuries suffered by Claimant/Injured-*Vinod Kumar Tandon* in a road accident on 10th July, 1992. On the basis of the evidence led, impugned Award has been rendered.

In the above-captioned first appeal, enhancement of compensation is sought by Claimant/Injured-*Vinod Kumar Tandon* whereas in the above-captioned second appeal, reduction in quantum of compensation awarded is sought by Insurer. Since these two appeals arise out of common impugned Award, therefore, they have been heard together and are being decided by this common judgment.

The facts, as noticed in impugned Award, need no reproduction for the reason that the principal challenge to impugned Award by learned counsel for Insurer is on the ground that in view of deletion of driver of bus in question, which was insured with Insurer, there is no liability of Insurer to pay the awarded compensation. Suffice to note that on an application of Claimant/Injured, driver of bus in question was deleted from array of parties vide order of 30th May, 2002.

At the outset, learned counsel for Claimant/Injured submits that it was a blunder on part of trial court lawyer, who had appeared on behalf of Claimant/Injured to have taken such a disastrous step of deleting the driver of offending bus in question. It was pointed out that this accident had taken place more than two decades ago, in which Claimant/Injured had sustained 100% permanent disability and remained bed-ridden for more than two decades and after death of Claimant/Injured, his wife, who was earlier working as a Clerk in a Bank, had to give up the job, to look after her bed-ridden husband. It is pointed out that now, this poor widow is surviving solely on the interest accruing on the awarded amount and so, in the peculiar facts and circumstances of this case, ends of justice would be met if an opportunity is given to Claimants to ensure service upon driver of bus in question and for this purpose, this matter needs to be remanded back by recourse to Order 41, Rule 23-A of CPC.

On the contrary, it is submitted by learned counsel for Insurer that remand may not serve any purpose after long span of time and it may prove to be a futile effort.

Be that as it may.

Considering the fact that Claimant is a widow, aged 71 years as per her affidavit filed alongwith the application to bring on record the legal heirs of Claimant/Injured (since deceased), is solely dependent upon interest accruing on the awarded compensation, an order to remand is amply justified to enable her to obtain legitimate compensation. Even if the driver of bus in question is not traceable, still substituted service can be effected upon him in accordance with the law, and thereafter, the quantum of compensation ought to be assessed afresh. In such a situation, the dependant Claimant would be well within her rights to urge the pleas taken in the above-captioned first appeal.

In the light of aforesaid, impugned Award is set aside on the afore-noted legal lacuna and the matter is remanded back to learned Tribunal to permit legal heirs of Claimant/Injured to take steps for impleadment of driver of bus in question and thereafter, to serve him in accordance with the law.

The parties through their counsel shall appear before learned Tribunal on 11th April, 2017. Let learned Tribunal make all endeavours to proceed expeditiously to decide the claim petition afresh after recalling of witnesses if required and to record fresh evidence, if any. Needless to say that the evidence recorded is required to be re-tendered for cross-examination by driver of bus in question, if insisted upon.

Now the question remains as to how the compensation deposited by Insurer is to be dealt with. In a similar case i.e. *Oriental Insurance Co. Ltd. v Upender Yadav & Ors.,* 2016 SCC OnLine Del. 1090, a co-ordinate Bench of this Court while remanding the matter, ordered the deposited compensation be retained.

In the instant appeal preferred by Insurer herein, vide order of 26th May, 2009, Insurer was directed to deposit the awarded amount with learned Tribunal and it is retained in the form of FDR, to be renewed from time to time and the interest accrued thereon is being remitted to Claimant/widow. Since it is brought to the notice of this Court that Claimant/Widow aged 72 years now is surviving solely on the interest accruing on these FDRs, therefore, it is deemed appropriate to permit continuance of this interim arrangement till the claim petition is decided afresh. Concerned Tribunal be apprised of this order forthwith.

With aforesaid directions, both the appeals are disposed of.

Copy of this judgment be given *dasti* to both the sides.

(SUNIL GAUR)
JUDGE

MARCH 23, 2017
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