

\$~R-205

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

Decided on: 14th September, 2017

+ MAC.APP. 302/2010

BHIM SINGH

.....Appellant

Through: Nemo.

versus

SAMSER SINGH & ORS.

..... Respondents

Through: Mr. Amit Gaur, Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant was the claimant before the tribunal in accident claim case (Suit No.31/06/09) instituted on 29.08.2006, it having been decided by judgment dated 03.02.2010. His claim was under Section 166 of the Motor Vehicles Act, 1988 on the averments that on 08.07.2006 at about 7:30AM while crossing the road on a bicycle in front of Lokesh Cinema on Main Rohtak Road, Nangloi, he was hit by a truck bearing registration No.HR-63-1188 (the truck), driven in negligent manner by the first respondent. The vehicle is registered in the name of the second respondent and was admittedly insured against third party risk with the third respondent (insurer). The tribunal, after inquiry accepted the claim for compensation on fault liability and awarded compensation, calculating it thus:-

Sl.No.	Head	Amount in (Rs.)
1.	Expenses incurred on treatment	35,000/-
2.	Expenses incurred on special diet	7,500/-
3.	Expenses incurred on conveyance	2,500/-
4.	Compensation for loss of salary and income	13,000/-
5.	Compensation for mental pain and agony	30,000/-
	Total	88,000/-

2. The liability to pay the above compensation was fastened on the insurer.

3. By the appeal at hand, the claimant has submitted that the medical expenses were in the sum of Rs.1,77,226/- but the same was not granted. He is also aggrieved on the ground that he had remained absent from duty for 81 days and has been compensated only for 42 days. The claimant also submitted that the rate of interest should have been levied at 24% per annum.

4. The appeal was admitted and was directed to be shown in the list of 'REGULARS' as per order dated 30.04.2012. When it is taken up for hearing, there is no appearance for the appellant. The appeal has been considered with the assistance of the counsel representing the insurer.

5. Upon perusal of the tribunal's record it is noted, that the appellant was in the employment of Delhi Development Authority (DDA) at the relevant point of time and his salary was in the sum of

Rs.9,000/- per month. He had submitted two bills showing medical expenditure one, for the amount of Rs.25,497/- for the period 08.07.2006 to 13.07.2006, the accident having occurred on 08.07.2006, reflecting his treatment as a general patient. He had also relied upon another bill (Ex.PW-3/A) which reflected expenditure in the sum of Rs.49,455/-. The tribunal rejected the said other bill on the ground it showed the patient (the person treated *i.e.*, the appellant), to have been entertained on account of “Panel – DDA”. This reasoning, in the opinion of this court, was not correct to reject the reimbursement of the expenditure in the sum of Rs.49,455/-. The medical institution where the treatment was taken may have had some arrangement with the employer of the claimant but, this would not mean that such expenditure was reimbursed or unauthorized.

6. The claimant had also proved that he had remained on leave from the date of accident (08.07.2006 to 27.09.2006). The tribunal, however, granted compensation only for 42 days observing that the leave for 32 days was “commuted leave” which would not result in any corresponding loss. Withdrawal from the leave account, whatever be the nature of leave was for reasons attributable to the injuries suffered in the accident, and so a loss which deserves to be suitably compensated. Therefore, the said view of the tribunal also cannot be upheld. The loss of income corresponding to the leave for such 34 days, thus, must be added. It is computed as $(9,000/- \times 32 \div 30)$ 9,600/-.

7. Adding the medical expenditure of Rs.49,455/- referred to above, and leave salary, the award deserves to be increased by (9600/- + 49,455/-) Rs.59,055/- rounded off to Rs.60,000/- (Rupees Sixty Thousand only).

8. Ordered accordingly.

9. There is no good reason why such exorbitant rate of interest as of 24% should be levied. It is directed that the enhanced portion of the award shall carry interest as levied by the tribunal.

10. The third respondent is directed to satisfy the modified award by requisite deposit with corresponding interest with the tribunal within 30 days, making it available to be released to the claimant.

11. The appeal stands disposed of in above terms.

SEPTEMBER 14, 2017

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R.K.GAUBA, J.