

\$~R-344

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

Decided on: 23rd October, 2017

+ **MAC APPEAL No. 495/2011**

LOKESH SINGH

..... Appellant

Through: None.

versus

SARTAZ & ORS.

..... Respondents

Through: Ms. Neerja Sachdeva, Adv. for
R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant had suffered injuries in a motor vehicular accident that occurred on 08.01.2010 due to negligent driving of bus bearing registration no. DL 1PA 5171. He instituted accident claim case (suit no. 123/2010) on 12.03.2010, seeking compensation. The said case was clubbed for inquiry with another similarly placed case arising out of same accident. On the basis of inquiry held, the tribunal, by judgment dated 22.03.2011, accepted the claim for compensation holding the bus driver negligent for occurrence of such accident. It awarded compensation in the sum of Rs. 1,51,378/-, fastening the liability on the insurance company (third respondent). The said amount would include Rs. 20,100/- towards medical

expenses; Rs. 18,000/- towards special diet & conveyance; Rs. 28,278/- for loss of income for the period of treatment for six months; Rs. 25,000/- as lumpsum compensation on account of temporary disability and Rs. 60,000/- towards pain & suffering.

2. The present appeal was filed seeking enhancement of compensation to the tune of Rs. 25 lakhs.

3. The appeal was put in the list of 'regulars' as per order dated 27.04.2012. It was taken up for exploring the possibility of amicable settlement before *lok adalat* on some dates but with no fruitful results. When it is taken up for hearing, there is no appearance on behalf of the appellant.

4. The matter has been considered with the assistance of the third respondent and on perusal of the record.

5. It is noted that the appellant had proved that he had suffered compound Grade-III B fracture, medial condyle femur and tibia bone of the right leg. He relied on disability certificate (Ex.R3W1/A) issued on 21.01.2011 by a board of doctors of Safdarjung Hospital indicating that he has been rendered physically handicapped to the extent of 23% in relation to the left lower limb, such physical impairment being temporary in nature, upon he being found to be an operated case of fracture of condyle of both bones of left leg with restriction of left knee joint. The tribunal noted the fact that the disability is temporary and, therefore, observed that such condition is likely to improve.

6. Though, in the appeal, it has been contended that above said disability would have a life-long effect, there is nothing filed in support of such contention, and so the view taken by the tribunal that

the temporary disability was likely to improve over two-three years, cannot be questioned.

7. The appellant examined himself as a witness (PW-2) on the strength of his affidavit (Ex.PW-2/A) stating that he was working on part-time basis with a private entity, M/s Bharat Motors, at a monthly salary of Rs. 8,000/- even while he was pursuing his studies. However, no witness from the said employer was examined to prove such employment or the terms on which the appellant was engaged. In these circumstances, the plea that the tribunal has fallen into error by notionally assessing the income with the help of minimum wages cannot be accepted.

8. In the given facts and circumstances, the award granted by the tribunal is found by this court to be just and adequate.

9. The appeal is dismissed.

OCTOBER 23, 2017

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R.K.GAUBA, J.