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

Decided on: 25th October, 2017

+ **MAC APPEAL 559/2011**

NITIN MAINY

..... Appellant

Through: None

versus

**EE GARRISON ENGINEER (VI) ELECTRICAL
SUPPLY & ANR.**

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant had instituted accident claim case (MACP 145/2010) on 27.07.2009 seeking compensation under Section 166 of the Motor Vehicles Act, 1988 on the averments that on 23.05.2009 while riding on motorcycle bearing registration no.DL-3S-BK-5094, he was hit by a motor vehicle described as Eicher truck bearing registration no.05-D-163875A of the first respondent, driven negligently by the second respondent.

2. The Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 27.01.2011, accepted the said case for compensation holding the driver of the Eicher vehicle responsible. The Tribunal found, on the basis of disability certificate (Ex. PW5/1)

issued by a board of doctors of Dr. Ram Manohar Lohia Hospital, New Delhi, that the claimant had been rendered permanently disabled, his functional disability being 90%. It was not impressed with the evidence led through Pawan Gupta (PW-3) and Gopal Sharma (PW-4) about the petitioner / claimant's private engagement as sales person but proceeded to grant compensation on the income adjudged at Rs.7,000/- p.m. The compensation in the total sum of Rs.18,42,859/- was awarded and the liability fastened on the respondents to pay, the said amount inclusive of awards under the heads of medical treatment, loss of income, pain and suffering, special diet, conveyance expenses and for disfigurement.

3. The claimant felt aggrieved with the award and filed the present appeal seeking enhancement. It came up for consideration on 08.04.2013 but none appeared for the appellant. The court put the appeal in the list of 'regulars' and directed that it shall be taken up in due course. When it is called out, there is no appearance again on behalf of the appellant.

4. The record has been perused and the contentions urged in the appeal considered. There is no merit in the plea that the claimant should have been taken as a case of permanent disability to the extent of 100%. Rather, the disability certificate (Ex. PW5/1) shows that it was treated as a case of temporary disability, the condition of the claimant not having stabilized from the date of its issue. The examining medical officer, Dr. Himanshu Kataria (PW-6) was confronted with the observation in the disability certificate that the condition was likely to improve. The answer given by the medical

officer that in majority of the cases the condition does not improve is neither here nor there. No effort has been made on behalf of the claimant to have his condition re-examined or re-evaluated. Even in the appeal, he has not offered any further material to show that his condition has either deteriorated or not improved. The plea about the tribunal falling into error by not accepting the evidence regarding salary of Rs.9,500/- p.m. is also without merit. The Tribunal has given sound reasons for rejecting the evidence of PW-3 and PW-4. They spoke about the engagement of the claimant in private employment without any corroborative record to substantiate the same.

5. In above facts and circumstances, there is no case made out for any further improvement in the award. The appeal is thus dismissed.

OCTOBER 25, 2017

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R.K.GAUBA, J.