

\$~R-532

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

Decided on: 22nd November, 2017

+ **MAC APPEAL 720/2012**

SANTOSHI

..... Appellant

Through: None

versus

RAJEEV CHOUDHARY & ORS.

..... Respondents

Through: Mr. J.P.N. Shahi and Ms.
Komal Dhingra, Advocates

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant had suffered injuries in a motor vehicular accident that occurred on 05.03.2006. The accident claim case (suit no.549/10) was instituted on 01.06.2007 to seek compensation under Section 166 of the Motor Vehicles Act, 1988. The Motor Accident Claims Tribunal (Tribunal), by judgment dated 23.11.2011, while accepting the case that the injuries had been suffered by her due to negligent driving of Tata Sumo bearing registration no.DL-1V-3596 by the second respondent and holding him to be the principal *tortfeasor*, awarded compensation in the total sum of Rs.3,45,000/-, *inter alia*, on the basis of conclusion that she suffers from permanent functional disability to the extent of 20%. The liability to pay has been fastened on the third respondent (insurer), which had concededly

issued an insurance policy covering third party risk in respect of the said vehicle at the instance of the first respondent (registered owner of the vehicle).

2. The appeal at hand was filed primarily to seek enhanced compensation on the grounds that the functional disability should have been treated as 100% in view of the disability certificate issued by a board of doctors of All India Institute of Medical Sciences (AIIMS) affirming that she is a case of traumatic brain injury suffering from 75% physical impairment.

3. The appeal was put in the list of 'Regulars', to be taken up on its own turn, by order dated 09.02.2016. When it is called out, there is no appearance on behalf of the claimant / appellant. The matter has been considered with the assistance of the counsel for the third respondent and by perusal of the record of the inquiry before the tribunal.

4. It is noted that the disability certificate (Ex. PW1/125) was based on the evaluation that the claimant is a case of "*traumatic brain injury sequelae with severe cognitive dysfunction, right brachial plexus injury and right optic atrophy*". The injury to the eye was also subjected to evaluation by eye specialist of Dr. Rajendra Prasad Centre for Ophthalmic Sciences, All India Institute of Medical Sciences by another certificate (Ex. PW1/123), it indicating that the claimant has been rendered visually handicapped by 40%. The disability certificate dated 21.07.2008 (Ex. PW1/125) ends with the note saying that re-assessment was recommended after five years. It

appears that the tribunal did not take any steps for arranging re-evaluation as was recommended.

5. In the above facts and circumstances, this court is of the opinion that the matter requires further probe including by another evaluation by a board of doctors of AIIMS. The impugned judgment is, thus, set aside. The matter is remanded to the tribunal for further inquiry in the course of which the claimant will be permitted to lead additional evidence and also be subjected to fresh evaluation by a medical board to be arranged by the tribunal.

6. Given the indication in the above record that the medical board of AIIMS had observed that the claimant is a case of severe cognitive dysfunction, the tribunal would be well advised to first assess as to whether he is able to prosecute her interest on her own and, if need be, appoint a next friend before proceeding further.

7. The parties are directed to appear before the tribunal on 21.12.2017.

8. Given the fact that the claimant has not appeared at the hearing on the appeal, it is directed that in case there is default in appearance on her behalf before the tribunal on the appointed date, it shall issue necessary process to secure her presence.

9. The amount of compensation already received by the claimant in terms of the impugned judgment, which has been set aside, will be liable to be adjusted against the fresh award to be passed by the tribunal.

10. The appeal is disposed of in above terms.

Dasti.

R.K.GAUBA, J.

NOVEMBER 22, 2017

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