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

Decided on: 3rd November, 2017

+ **MAC APPEAL 892/2011**

ABHAY KUMAR

..... Appellant

Through: None

versus

BALBIR SINGH & ORS.

..... Respondents

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

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant had instituted accident claim case (MACP No.200/2010) on 03.10.2008 seeking compensation under Section 166 of Motor Vehicles Act, 1988 on the averments that while riding on the pillion of motorcycle bearing registration no. DL-6SZ-8951 (motorcycle) on 11.08.2008 from Gurgaon to village Naraina, New Delhi, he had suffered injuries on account of motor vehicular accident that had occurred involving a Tavera car bearing registration no. HR 55-FT-0480 (a car), the latter having been driven in a rash manner by the first respondent (the driver). It appears that the motorcycle driver Vinod Kumar had also suffered injuries in the same accident and had also filed his own case (MACP No.194/2010). Both the cases were clubbed for inquiry and decided by the tribunal by common judgment.

The second respondent being the registered owner of the car and the third respondent being the insurer had also been impleaded before the tribunal.

2. By the judgment dated 16.03.2011, the tribunal returned the finding that the accident had occurred due to negligent driving of the car thus holding its driver and registered owner jointly and severely liable to pay the compensation, the insurer (third respondent) being liable to indemnify and pay the compensation to the claimants.

3. The finding on the issue of negligence has attained finality as it was not challenged by any of the parties. The tribunal awarded compensation in the total sum of Rs.2,59,529/-. It including Rs.2,00,644/- under the head of loss of income calculated on the basis of conclusion that the claimant has suffered functional disability to the extent of fifteen per cent (15%).

4. Aggrieved with the quantum of compensation granted, the claimant has come up with the present appeal. The appeal was admitted and directed to be put in the category of 'regular matters' to be taken up on its own turn by order dated 10.05.2012. When it is taken up for hearing, there is no appearance on behalf of the appellant (claimant). The matter has been heard with the assistance of the counsel for the insurer and by perusal of the record of the Tribunal.

5. On perusal, this Court finds that the judgment rendered by the tribunal on the claim petition of the appellant is perverse and not based on the assessment of the evidence in entirety.

6. On the question of functional disability all that the tribunal has noted is as under:-

“13. Petitioner filed a disability certificate issued by DDU Hospital. The certificate is undated but states that petitioner has become disabled by 90% in relation to right upper limb due to brachial plexus injury. Then he filed another disability certificate dated 30/3/2010 mentioning disability as 30%. This certificate has also issued by the same hospital and seems to be the latest one. His disability in respect of the whole body is taken as half i.e. 15%.

14. PW1 deposed that he was privately employed as Business Development Officer at a salary of Rs.8675/- per month. The Salary certificate has not been exhibited but it shows that petitioner was given assignment for a fixed term from 13/11/2007 to 12/2/2008. Date of accident is 11/8/2008. So on that date he was not employed and hence he is taken as matriculate labourer for whom prevalent minimum wages were Rs.4130/-.”

7. It may be mentioned here that the claimant had relied on two disability certificates, one dated 12.03.2010, sent to the tribunal by the chairman of the medical examination board of DDU Hospital, Hari Nagar, New Delhi (Ex.PW1/N) and, the other, opinion of the medical orthopedic disability board of same hospital again sent to the tribunal by communication dated 30.03.2010. It appears that the first said disability certificate is based on opinion of an orthopedic specialist while the second disability certificate is based on assessment by an eye specialist. It seems to have escaped the notice of the tribunal that the claimant had suffered fracture in the right upper limbs and also sustained partial loss of sight in the right eye. The assessment of functional disability also required consideration of the job for which

the claimant was qualified or engaged in. No such facts have been taken into account.

8. In these facts and circumstances, the impugned judgment, insofar as it determined of the compensation in favour of the appellant is set aside. The matter is remanded to the tribunal for fresh consideration. For such purposes, it shall obtain a fresh evaluation by the medical board of a government hospital, such board to be constituted by including not only an orthopedic specialist but also an eye specialist.

9. The amount received by the claimant in terms of the judgment earlier rendered by the tribunal will be liable to be adjusted.

10. The parties are directed to appear before the tribunal for further proceedings on 04.12.2017.

11. Since the claimant has not appeared before this Court at the hearing on the appeal, in all fairness, the tribunal is advised to issue a court notice to him to secure his presence before proceeding further, in the event of he failing to appear pursuant to these directions.

12. The appeal stands disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 03, 2017

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