

\$~R-226

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

Decided on: 19th September, 2017

+ MAC.APP. 471/2010

RAM SINGH

..... Appellant

Through: None

versus

UMESH PRASAD YADAV & ANR

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant was the claimant before the Motor Accident Claims Tribunal (Tribunal) in accident claim case (petition no.295/2006) instituted on 30.01.2001, which was decided by judgment dated 04.03.2010 with award of Rs.20,000/- having been granted, the liability to pay having been fastened on the first and second respondents, they having been described as the driver and registered owner respectively of the car bearing registration no.DL-1CE-6618.

2. The appellant presses for enhancement of the award of compensation.

3. It is noted that though both the respondents had been served, only second respondent appeared through counsel in response. The appeal was admitted and put in the category of 'regulars', to come up

on its own turn. When it is taken up for hearing, there is no appearance on either side.

4. On perusal of the tribunal's record, it is noted that the appellant's case was that on 23.01.2000 while crossing the road from Badli in the direction of his house, he was hit by the car driven by the first respondent in rash manner, this resulting in he suffering grievous injuries, his leg having been put in plaster. At the inquiry, it is noted that there was no valid or effective insurance policy taken out by the registered owner (second respondent) in respect of the car for the period in question to cover the third party risk. The tribunal thus did not hold the insurance company, which was impleaded in the claim petition, responsible. On consideration of the evidence of the claimant (PW-1), the tribunal accepted the case of the claimant for compensation. The evidence had been adduced that the claimant had suffered multiple fractures. Though he had been discharged from Hindu Rao Hospital where he had been taken on the date of the accident, he had later taken treatment from ESI Hospital as an indoor patient till 16.03.2000. It is on that basis that the tribunal awarded Rs.15,000/- towards pain and suffering. The tribunal noted the evidence that though the treatment had been taken from ESI Hospital, apparently the claimant had not filed any documentary proof of expenditure on the treatment and did not award anything under the head of medical expenses. Rs.2,000/- was added towards special diet. The claimant had led evidence (Ex. PW1/E) to prove that he had remained absent from duty as Foreman in Bharat Rolls Hardaring for the period 25.01.2000 to 30.09.2001. His salary for the relevant

period was Rs.3,018/- p.m.. The tribunal failed to take into consideration that the period of absence was for 20 months, and did not make any award towards loss of income.

5. In the given facts and circumstances, the awards for loss of income for the period of absence from duty and on account of pain and suffering are found to be deficient. The salary for the period of 20 months would be [Rs.3,018/- x 20] Rs.60,360/-. Thus, an amount of Rs.60,360/- needs to be added under the said head. Having regard to the nature of the injuries suffered and the period of treatment undergone, award under the head of pain and suffering is increased to Rs.50,000/- which would entail further increase by Rs.35,000/-.

6. Thus, there shall be an enhancement in the award by [Rs.60,360/- + Rs.35,000/-] Rs.95,360/-, rounded off to Rs.96,000/- (Rupees Ninety six thousand only). Needless to add, it shall carry interest as levied by the tribunal.

7. The respondents shall continue to be liable jointly and severally to pay the enhanced portion of the award as well. They are called upon to satisfy the award as modified by requisite deposit with the tribunal within 30 days, making it available to be released to the claimant.

8. The appeal is disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 19, 2017