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

Decided on: 28th July, 2017

+ **MAC APPEAL No. 388/2008**

DELHI TRANSPORT CORPORATION & ANR..... Appellants

Through: **Ms. Palak Rohmetra, Adv.**

versus

CHANDER SEKHAR

..... Respondent

Through: **Mr. S.N. Parashar, Adv. for
R-1.**

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The respondent, then aged about 17 years, was moving on bicycle on 14.10.2000 and had reached in the area of Lal Mandir at Kirari Road, Delhi when he met with an accident due to which his left upper limb came to be crushed, the treatment and surgical procedure that followed resulting in amputation above elbow rendering him permanently disabled, his physical disability having been certified to be to the extent of 40%, as per the disability certificate issued by Lok Nayak Jai Prakash Narayan Hospital (Ex.PW-3/1). He instituted accident claim case (petition no. 387/2008) stating that the accident had been caused by a bus bearing registration no. DHP 3851 (the bus) of the first appellant (Delhi Transport Corporation), it having been driven at the relevant point of time by the second appellant, its employee, in negligent manner.

2. The case was contested by the appellants on the basis of inquiry and the evidence gathered. The tribunal returned finding, by judgment dated 14.03.2008, holding the second appellant responsible for the accident. It assessed compensation in the total sum of Rs. 4,12,000/- which includes loss of income on account of permanently disability which was assessed to be to the extent of 70% to be functional disability.

3. This appeal was filed questioning the said judgment. At the hearing, it is argued that the statement of the respondent before the police would show that he had turned the cycle suddenly towards left side thereby coming in the way of the bus and, thus, he himself was negligent. This contention must be rejected for the reason the tribunal was called upon to reach its conclusion on the basis of the evidence led before it. Petitioner had examined himself as PW-1 and proved that the bus had come from behind undoubtedly when he was taking the cycle on its left side. But, the evidence also proved that the bus was moving in uncontrollable speed and ended up colliding against him. It is pertinent to note here that second appellant appearing as R1W1 had, in fact, denied any collision and did not take the defence of contributory negligence. The plea of negligence on the part of the claimant is, thus, rejected.

4. The counsel for the appellants then argued that the disability certificate issued by the medical board should have been the benchmark. The argument is devoid of substance as the tribunal was to make assessment of loss of future income on the basis of functional disability. It went by the dispensation in the Employees Compensation

Act, 1923. Having regard to the fact that there was amputation above elbow of the left upper limb, the assessment of functional disability to the extent of 70% and the loss of income calculated thereupon cannot be faulted.

5. For the foregoing reasons, the appeal is devoid of substance and is dismissed.

6. By order dated 03.10.2008, the appellants had been directed to deposit the entire awarded amount with interest and out of such deposit 75% was allowed to be released. The balance lying in deposit shall also now be released to the claimant in terms of the impugned judgment.

7. The statutory deposit shall be refunded.

JULY 28, 2017
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R.K.GAUBA, J.

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