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

Decided on: 21st September, 2017

+ **MAC APPEAL 683/2010**

THE DIRECTOR, C.S.E., M.C.D. Appellant
Through: None

versus

SUNIL KUMAR VERMA @ SONU Respondent
Through: None

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The first respondent had instituted the accident claim case (suit no.699/2008) on 10.02.2004 seeking compensation under Section 166 of the Motor Vehicles Act, 1988 on the averments that on 11.05.2002 while riding on the pillion of a two wheeler scooter bearing registration no.DL-2SB-8518 (scooter), he had suffered injuries on account of the said vehicle having been hit by a truck bearing registration no.DL-1GA-0552 (truck) admittedly belonging to the appellant. As per the case for compensation, the truck was driven negligently and on account of the injuries suffered, the claimant was rendered permanently disabled, the toe of his right foot having been amputated.

2. The claim petition was put to inquiry and, on the basis of the evidence adduced, the Motor Accident Claims Tribunal (Tribunal), by judgment dated 13.11.2009, upheld the case that the accident had occurred due to the negligent driving of the truck. The compensation in the total sum of Rs.4,00,770/- was awarded, it inclusive of the compensation under various heads including on account of conveyance and special diet, loss of income, loss of earning capacity due to disability besides non-pecuniary damages due to pain and suffering, loss of amenities of life and physical disfigurement. The liability to pay the said amount was fastened on the appellant.

3. The appeal at hand was filed primarily raising two contentions; one, that the negligence was not properly proved and, second, that the disability had been wrongly assumed.

4. The appeal was admitted and directed to come up in due course. When taken up for hearing, there is no appearance on behalf of the appellant.

5. Having perused the record of the tribunal, this court finds no substance in any of the contentions urged. The negligence had been proved by the claimant appearing as his own witness (PW-1). On the other hand, the second respondent, driver of the truck, and an employee of the appellant, was never called in to prove facts to the contrary. In these circumstances, it is not correct on the part of the appellant to contend that the tribunal has gone more by the opinion of the investigating police in the corresponding FIR no.268/02 of PS Uttam Nagar.

6. The finding on the issue of disability is based, *inter alia*, on the disability certificate (Ex. PW-1/11) and the testimony of Dr. K.K. Kumra (PW-2) a member of the disability board. Since there was no evidence to the contrary, the findings returned by the tribunal in this regard also do not call for any interference.

7. The appeal is found totally devoid of substance and is consequently dismissed.

8. Given the lack of proper prosecution of the appeal, the statutory amount deposited by the appellant is forfeited as costs to be made over to Delhi High Court Legal Services Committee.

9. The appellant had been directed by earlier orders to deposit the entire awarded amount and from out of such deposit, 50% (fifty percent) was allowed to be released to the claimant. The Registry shall now release the balance from the amount that was withheld to the claimant in terms of the impugned judgment.

R.K.GAUBA, J.

SEPTEMBER 21, 2017

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