

\$~R-548

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

Decided on: 23rd November, 2017

+ **MAC APPEAL 766/2012**

RAJENDER SINGH

..... Appellant

Through: Mr. R.K. Bachchan, Advocate

versus

AZIZ & ORS.

..... Respondents

Through: Mr. Shoumik Mazumdar for
Mr. Pankaj Seth, Advocate for
R-3

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 (MACT suit no.320/2010) instituted by him on 23.02.2007, seeking compensation for injuries suffered in a motor vehicular accident that took place on 08.01.2002 on account of negligent driving of Tata truck bearing registration no.HR-10A-1878. The tribunal decided the said case, by judgment dated 24.03.2012, *inter alia*, holding the first respondent /truck driver negligent leading to the said accident. The tribunal found that the truck was registered in the name of the second respondent and insured against third party risk with the third respondent for the period in question. It computed compensation in the total sum of

Rs.6,05,000/- and directed the third respondent (insurer) to pay the same with interest. The award includes Rs.2,00,000/- under the head of “loss of future prospects”, which has been granted in the face of finding that the appellant has been rendered permanently disabled, the disability having been taken as 90% in relation to the right upper limb and both lower limbs. Dis-satisfied with the said award, the appellant has approached this court by the appeal at hand seeking enhancement.

2. During the hearing, reference was made to the disability certificate (Ex. P4) copy whereof was submitted on record which purports to have been issued by a board of doctors of Guru Tegh Bahadur Hospital, Delhi. In order to prove the said disability certificate, one of its members, Dr. Anil Arora had been called as a witness. The record would show that Dr. Anil Arora was examined as PW-6 on 05.09.2011 after another witness PW-5 had been examined. Unlike in the case of PW-5, while referring to the deposition of PW-6, the tribunal observed in the short order recorded on 05.09.2011 that he had been examined-in-chief and, thereafter, discharged. The deposition sheet also confirms that the witness was never tendered for cross-examination to the opposite party. In this view, the deposition of PW-6 cannot even be treated as evidence in the strict sense of the term.

3. Against the above backdrop, the learned counsel for the appellant fairly conceded that the conclusions on the issue of nature and extent of disability are not supported by any evidence on record and therefore, the matter would need further inquiry.

4. Thus, the impugned judgment to the extent compensation was thereby determined is set aside and the matter remitted to the tribunal for further inquiry. Needless to add, in the course of further inquiry, the appellant will be obliged to have PW-6 re-summoned and, if required, examine him further and thereafter tender for cross-examination by the parties that contest. The appellant will have the liberty to adduce such further evidence as he may deem necessary to bring home the case for enhanced compensation as is sought by the appeal at hand.

5. The parties are directed to appear before the tribunal on 09.01.2018.

6. The amount already received by the claimant in terms of the impugned judgment shall be liable to be adjusted against the amount payable in terms of the fresh adjudication by the tribunal.

7. The appeal is disposed of in above terms.

Dasti.

NOVEMBER 23, 2017

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R.K.GAUBA, J.