$~R-90

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

Decided on: 25th July, 2017

\+ MAC.APP. 407/2009

ABDUL GAFFAR ..... Appellant

Through: Nemo.

versus

DALJEET SINGH & ANR. ..... Respondents

Through: Mr. Shoumik Mazumdar, Advocate for R-2.

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

JUDGMENT (ORAL)

1. The appellant, then 37 years old, was walking on foot at about 9:00 p.m. on 08.02.2003 when he was hit by motorcycle no.DL-3S-AA-4836 (the motorcycle) resulting in he suffering multiple fractures including in the left femur bone. He instituted accident claim case (Suit No.331/2003) on 19.05.2003, impleading the first respondent, he being the driver and owner of the motorcycle, and the second respondent, it being admittedly the insurer against third party risk for the period in question. His case that the accident had occurred due to negligent driving of the motorcycle was accepted and, by judgment dated 25.04.2009, compensation in the total sum of Rs.42,000/- was

granted with interest @ 9% per annum. Since the insurance company had admitted its liability to indemnify, it was called upon to pay.

2. The present appeal was filed in August, 2009 seeking enhancement. The appeal was admitted by order dated 04.02.2011. Thereafter, whenever the appeal has come up for hearing, there has been no appearance on behalf of the appellant. There is no reason why this appeal, amongst the oldest on board of this court, should be deferred yet again.

3. The learned counsel for the second respondent has been heard and the record of the tribunal perused.

4. The tribunal assessed the compensation as under:-

Head	**Amount in (Rs.)**
Treatment expenses	25,147/-
Pain and Sufferings	5,000/-
Special diet	2,000/-
Conveyance	1,000/-
Loss of Income	8,400/-
Total	41,547/- which is rounded off to Rs.42,000/-

5. The prime contention raised in the appeal is that the award of compensation granted by the tribunal does not take care of the loss of future income due to the disability suffered. It is noted that in the

course of adducing evidence in support of his claim, the appellant had proved, by documents Ex.PW-1/50, that he had been certified by board of doctors of Safdarjung hospital, New Delhi on 30.03.2006 to have suffered disability in the left lower limb to the extent of 7%. In the evidence, he explained that he was working as a tailor to earn his livelihood. The disability being in the lower limb, it would undoubtedly affect his earning capacity. In these circumstances, his case that he had been rendered functional disability to the extent of 7% should have been accepted and compensation towards loss of future income on that account should have been granted.

6. It is noted, that as per the disability certificate, the appellant was 45 years old on 30.06.2006. Since the accident had occurred on 08.02.2003, he would be about 47 years old at the relevant point of time. This would mean that future loss of income will have to be computed with the multiplier of 14.

7. The tribunal assessed the income at Rs.s2,800/- per month in absence of any formal proof. The loss of future income, thus, is computed as (2800/- x 7/100 x 12 x 14) Rs.32,928/- rounded off to Rs.33,000/-.

8. Another grievance in the appeal was that the tribunal should have calculate the loss of income for the period immediately after the accident taking it to be the then incapacity for three months. The evidence of the appellant on the strength of affidavit Ex.PW-1/A does show that he had remained under treatment till 15.10.2003 and, thus, for a period of 8½ months. In these circumstances, instead of

Rs.8,400/- only, loss of income due to this incapacity is calculated as (2800 x 8.5) Rs.23,800/-.

9. In the appeal, grievance was also raised about inadequacy of awards towards treatment expenses, pain and suffering, special diet, conveyance, etc. Since the award towards treatment expenses is based on actuals, there is no occasion for any modification in that regard. The awards under the other heads also do not need any modification.

10. Thus, the compensation is recomputed as (Rs.25,147/- + 5,000/- + 2,000/- + 1,000/- + 23,800/- + 33,000/-) Rs,89,947/- rounded off to Rs.90,000/-.

11. The award is modified accordingly. Needless to add, it shall carry interest as levied by the tribunal.

12. The second respondent (insurance company) is directed to satisfy the modified award by requisite deposit with the tribunal within thirty days, making it available to the claimants.

13. Appeal is disposed of in above terms.

R.K.GAUBA, J.

JULY 25, 2017
vk