$~R-382

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

Decided on: 31st October, 2017

\+ MAC APPEAL 766/2011

SANJAY RODE ..... Appellant

Through: None

versus

AMIT & ORS. ..... Respondents

Through: Mr. Pankaj Gupta for Ms. Suman Bagga, Adv. 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 proceedings arising out of the claim case (suit no.1417/2008) instituted by him on 21.05.2008 which was decided by judgment dated 19.05.2011. The tribunal accepted his case that he had suffered injuries in a motor vehicular accident that had occurred on 14.05.2008 due to the negligent driving by the first respondent (driver) of the car bearing registration no.UP-14-AT-0672 which is admittedly registered in the name of the second respondent (owner) and was insured against third party risk for the period in question with the third respondent (insurer). The tribunal found on the basis of the evidence that the claimant has suffered permanent disability, his functional disability having been assessed to the tune of

10%. The claimant had pleaded that he was engaged in a private employment at a salary of Rs.14,500/-. No witness was examined to prove the said claim. The tribunal, therefore, went by the minimum wages payable during the relevant period and calculated the loss of future income on that basis. It appears that the claimant had pleaded that he had to remain on leave for a period of 24 days but no proof was adduced. The tribunal awarded compensation in the total sum of Rs.1,87,600/-.

2. By the appeal at hand, the claimant sought enhancement primarily contending that his income as pleaded should have been accepted. On his application (CM 15936/2011) opportunity was given in terms of Order XLI Rule 27 of the Code of Civil Procedure, 1908 to bring additional evidence by virtue of order dated 28.01.2015. The matter remained pending on the board of the Registrar on several dates but no witness was examined under Order XLI Rule 27 CPC. Eventually, on 17.12.2015, it was submitted on behalf of the appellant that he did not wish to examine any witness at that stage.

3. Thus, the opportunity for additional evidence also having been exhausted, there is no evidence brought on record to prove the contention about the earnings.

4. When the appeal is taken up, there is no appearance on behalf of the appellant.

5. The appeal is, thus, dismissed.

R.K.GAUBA, J.

OCTOBER 31, 2017/yg