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

Decided on: 29th November, 2017

+ **MAC APPEAL 937/2012**

R.K. TANGRI

..... Appellant

Through: None

Versus

NATIONAL INSURANCE COMPANY LTD.

& ORS.

.... Respondents

Through: Mr. Arihant Jain for Ms.
Shantha Devi Raman, Advocate
for R-1

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 (suit no.904/2009) instituted on 12.11.2007 whereby he had sought compensation for injuries sustained by him and the permanent disability suffered in the consequence on account of a motor vehicular accident that had occurred on 31.08.2007 due to rash driving of a car bearing registration no.DL-3CV-8209 by the first respondent, the said car being owned by the second respondent and insured against third party risk with the third respondent for the period in question.

2. The tribunal held inquiry in which the first and second respondents suffered the proceedings *ex-parte*. By judgment dated 22.05.2012, the tribunal held that the injuries had been suffered due to

negligence on the part of the said car driver. The compensation in the total sum of Rs.3,84,113/- was awarded, it having been calculated under the heads of pain and suffering, the loss of amenities of life, medical expenses, conveyance charges and special diet.

3. Aggrieved with the said award, the present appeal was filed seeking enhancement.

4. The appeal was put in the list of 'Regulars' by order dated 28.03.2016. Thereafter, it was taken up in an effort for amicable resolution before *Lok Adalat* but with no results. When it is called out for hearing, there is no appearance on behalf of the claimant / appellant.

5. On perusal, it is found that the appellant had claimed before the tribunal that the injuries included loss of vision in the right eye, he relying on disability certificate (Ex. PW2/1), issued by a board of doctors of Dr. Ram Manohar Lohia Hospital, New Delhi in which context Dr. Shashi Vashisht, the Chairman of the said medical board appeared as witness before the tribunal. It is noted that the certificate issued by the board does indicate the claimant to be visually disabled to the extent of 30%, such visual impairment being non-progressive but it having been added by hand that he is to be treated as a case "not visually disabled". The attention of PW-2 to this was drawn during the course of her testimony when she stated that the office copy of the disability certificate does not carry any such qualifying opinion. There is an inherent contradiction in the disability certificate, which required clarification. The tribunal unfortunately has not undertaken any such exercise.

6. By the appeal at hand, the claimant has reiterated that he has suffered damage to one eye and, in the consequence, he is also losing vision in the other eye on account of what he terms as 'sympathetic bilateral damage'.

7. Besides the above issue, the approach of the tribunal to the determination of the compensation is found to be deficient also for the reason that instead of assessing the functional disability, the tribunal has proceeded to grant lumpsum amount of Rs.2,00,000/- under the head of loss of amenities of life.

8. In the foregoing facts and circumstances, where this court finds the case of the claimant requires deeper probe, the appropriate course would be to remit the same for further inquiry. Thus, the impugned judgment to the extent compensation was thereby awarded, is set aside and the matter for such purposes is remitted to the tribunal for further inquiry and fresh determination in accordance with law.

9. In view of the inherent contradiction in the disability certificate as noted above, it will be advisable that the tribunal arranges fresh evaluation of the claimant by a board of doctors of some other government facility.

10. The parties are directed to appear before the tribunal for further proceedings in accordance with law on 10.01.2018.

11. Since the claimant has not appeared at the final hearing on the appeal, it will be appropriate that the tribunal issues a court notice to him to secure his presence. The amount already received by the claimant in terms of the judgment which has been set aside by this

court will be liable to be adjusted as per the directions in the fresh adjudication.

12. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 29, 2017

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