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

Decided on: 20th September, 2017

+ **MAC APPEAL No. 624/2010**

RAMESHWAR DUTT SHARMA Appellant
Through: None.

versus

AKASH PAWAR & ANR. Respondents
Through: Mr. Pankaj Seth, Adv. for R-2.

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

JUDGMENT (ORAL)

1. The appellant, employed as Assistant Sanitary Inspector with Municipal Corporation of Delhi (MCD), suffered injuries in motor vehicular accident that occurred on 13.05.2007 on being hit by car bearing registration no. DL 4CH 2269, admittedly insured against third party risk with the second respondent (insurer) for the period in question, the injuries including fracture of right femur bone. He instituted accident claim case (petition no. 163/2010) on 11.07.2007 alleging that the said accident had been caused due to negligent driving of the car by the first respondent. The tribunal held inquiry and, by judgment dated 03.06.2010, returned a finding accepting the claim on the principal of fault liability holding the first respondent to

have been negligent. The said finding has attained finality as it was not questioned by any appeal by the affected parties.

2. The tribunal awarded compensation in the total sum of Rs. 31,907/- directing the insurer to pay the same with interest @ 7.5%, the said amount inclusive of Rs.1,907/- towards medical expenses, Rs. 25,000/- towards pain & suffering and Rs.5,000/- for special diet with no further amount added towards loss of income for the reason the claimant had availed of medical leave of absence from his employer.

3. The appeal at hand was filed seeking enhancement raising the grievance that the compensation awarded is inadequate.

4. The appeal was admitted and put in the list of regular matters by order dated 05.05.2011. When it is taken up for hearing there is no appearance on behalf of the appellant. The matter has been heard with the assistance of counsel for second respondent and by perusal of the tribunal's record.

5. It is noted that when the appeal was taken up for the first time on 20.09.2010, the counsel for the appellant wanted to place on record further evidence regarding medical expenditure. It is noted that while appearing as his witness (PW-1) on the strength of his affidavit (Ex.PW-1/A), the appellant had claimed total medical expenditure in the sum of Rs. 70,000/-. He, however, placed on record the proof of Rs. 54,907/- only (Ex.PW-1/4). The tribunal reduced the amount by Rs. 53,000/- in view of the admission of the claimant that the said amount had already been reimbursed under the mediclaim policy. This approach of the tribunal cannot be faulted as the claimant cannot have double advantage. In spite of the opportunity granted by order dated

20th September, 2010, no further proof of any other medical expenditure has been submitted in the appeal. Therefore, there is no case made out for any increase under the head of medical expenditure.

6. However, the approach of the tribunal in declining the loss of income cannot be accepted as PW-1 (claimant) had proved that he was in receipt of Rs. 16,604/- as monthly salary from MCD and that he had remained absent from duty for a period of six months. This loss of leave also had to be translated in terms of money inasmuch as the leave represents value. The amount of Rs. 99,264/- towards the loss of leave salary, thus, will have to be added to the compensation.

7. There is no case made out for any further addition to the award. The award amount is increased to (31,907 + 99,264) Rs.1,31,171/-, rounded off to Rs. 1,32,000/-. (Rupees One Lakh Thirty Two Thousand Only). Needless to add, it shall carry interest as levied by the tribunal.

8. The second respondent is directed to satisfy the enhanced award by requisite deposit with the tribunal within 30 days making it available to be released.

9. The appeal is disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 20, 2017

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