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

Decided on: 21st September, 2017

\+ MAC APPEAL No.665/2010

PUNEET KHURANA ..... Appellant
Through: None.

versus

TOUSEEF RASHID MAKROO & ORS. ..... Respondents
Through: None.

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

JUDGMENT (ORAL)

1. The appellant was injured in a motor vehicular accident that occurred on 02.05.2007 on being hit by car bearing registration no. DL 3CV 3671 (the car), admittedly insured with the second respondent (insurer) against third party risk for the period in question. He instituted accident claim case (MACT 353/2008) impleading the first respondent describing him as the driver of the car besides the insurer (second respondent). The tribunal held inquiry.

2. During the proceedings before the tribunal both the said respondents including the insurer (it having filed written statement) stopped appearing and were set *ex-parte*. The appellant examined himself (as PW-1) on the basis of his affidavit (Ex.PW-1/1). The tribunal by judgment dated 18.05.2010, granted compensation in the total sum of Rs. 1,17,300/- calculating it, thus:-

S.No.	Heads	Compensation
1.	Medicines & treatment	Rs. 55,000/-
2.	Loss of Income	Rs. 27,300/-
3.	Pain & suffering	Rs. 25,000/-
4.	Conveyance, Special diet	Rs. 10,000/-
	Total	Rs. 1,17,300/-

3. The insurer was directed to pay the above said amount with interest @ 9% per annum.

4. The appeal was filed seeking enhancement primarily raising the contention that the award is inadequate for the reason the loss of earnings have not been properly calculated and the expenditure incurred on treatment not taken care of.

5. The appeal was entertained by order dated 05.10.2010 with notice being accepted on behalf of the insurer. It was admitted and directed to be taken in due course. When called out, none appears on either side.

6. On perusal of the record, it is revealed that the appellant had proved that he had suffered fracture of the shaft of left femur bone, which required prolonged treatment in hospital including surgical procedure wherein inter-nailing was done. The appellant had testified through his affidavit (Ex.PW-1/1) that he had spent Rs.1,05,374/- towards his treatment and that from his business of grocery he was earning Rs. 7,000/- per month and since he was unable to work for gain on account of treatment for one year, he had to suffer loss of income to the extent of Rs. 84,000/-. Since the respondents had chosen

to suffer the proceedings *ex-parte*, there being no contest, the evidence of the appellant about medical expenditure to the tune of Rs. 1,05,374/- has gone unimpeached. Similarly he has now substantiated the claim of income by placing on record copies of income–tax returns (ITRs) for the assessment years 2006-2007 and 2007-2008. The accident having occurred in the month of May, 2007, the ITR for the previous year submitted in March, 2007, prior to the accident, can be taken as safe corroborative material. Going by the declaration of income in the said document, the word of the claimant on oath, through his affidavit (Ex.PW-1/1), cannot be doubted. In these circumstances, he also deserve to be compensated for the loss of income of Rs.84,000/-.

7. While the above claims, substantiated by the affidavit (Ex.PW-1/1), deserve to be taken care of, the statement of about Rs. 50,000/- having been spent on special diet is found to be exaggerated.

8. For the foregoing reasons, the award under the head of medicines and treatment requires to be increased by (1,05,374 - 55,000) Rs. 50,374/- while award towards loss of income deserves to be increased by (84,000 – 27,300) Rs.56,700/-. Put together the above mentioned amounts require, the compensation to be increased by (50,374 + 56,700) Rs. 1,07,074/-. Adding this to the compensation awarded by the tribunal, the final award is increased to (1,17,300 + 1,07074) Rs. 2,24,374/-, rounded off to Rs. 2,25,000/-(Rupees Two Lakhs Twenty Five Thousand only.) Ordered accordingly. Needless to add, it shall carry interest as levied by the tribunal.

9. The second respondent (insurer) is directed to satisfy the enhanced award by requisite deposit with the tribunal within thirty days, making it available to be released, to the claimant.

R.K.GAUBA, J.

SEPTEMBER 21, 2017
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