

\$~R-109

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

Decided on: 10th August, 2017

+ MAC.APP. 490/2009

AMIT

..... Appellant

Through: None

versus

BADLU RAM

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appeal at hand was filed to assail the judgment dated 20.07.2009 of the Motor Accident Claims Tribunal (Tribunal), in the accident claim case (suit no.336/2008), instituted by the first respondent Badlu Ram (since deceased) on 12.04.2006 for injuries suffered in a motor vehicular accident that occurred on 29.05.2005 at about 9.00 a.m. at Rama Road, Patel Nagar Chowk, New Delhi statedly involving motorcycle bearing registration no.DL-6SQ-7167 (the motorcycle), admittedly registered in the name of the second appellant (Mahinder Puri, since deceased), it being driven at the relevant point of time by the first appellant (Amit, now the sole appellant). In the said claim case, no insurance company was impleaded as the motorcycle was not shown to be covered by any insurance policy against third party risk.

2. The Tribunal after inquiry, by judgment dated 20.07.2009, awarded total compensation in the sum of Rs.88,241/- with interest at the rate of seven and half per cent (7.5%) holding the appellants jointly and severally liable to pay, the said amount including Rs.34,106/- towards medical expenses, Rs.20,000/- towards conveyance and special diet charges, Rs.9,135/- towards loss of income and Rs.25,000/- towards pain and suffering and loss of amenities of life.

3. The appeal at hand was filed primarily to reiterate the contention of the appellant that there was no collision and that the first appellant and the motorcycle of the second appellant have been falsely implicated. It was the plea of the first appellant before the Tribunal, also urged in his testimony (as R1W1) that when he had reached the spot in question, he had found the victim lying injured with his bicycle overturned and that he had only helped him to be shifted to hospital. This plea and evidence was rejected by the tribunal.

4. The appeal was admitted and directed to be shown in the list of 'Regulars. But when it is taken up, there is no appearance on behalf of the appellant. It may be added that the first respondent (claimant) expired during the pendency of these proceedings on 04.02.2014 and has been substituted by his son Sunder Singh vide order dated 03.03.2014. Similarly, the second appellant had also expired during the pendency of these proceedings, he being survived by the first appellant and, consequently, the name of the second respondent was deleted from the array by order dated 03.03.2014.

5. Having perused the record of the inquiry before the tribunal, this court finds no good reason to interfere. The testimony of the claimant, appearing as PW-1, has been rightly accepted by the tribunal. He had deposed that he was moving on his bicycle when the motor cycle had come at high speed and had hit against him causing the injuries resulting in fracture of two bones of the right leg. The word of the first appellant appearing, as R1W1, denying any such involvement could not have been accepted in view of the other corroborative material submitted in the form of copy of the charge-sheet of the corresponding criminal case registered vide FIR no.267/2005 under Sections 279, 338 of the Indian Penal Code, 1860, PS Moti Nagar.

6. The compensation awarded in the case cannot, by any stretch of imagination, said to be excessive. The claimant was 70 years old on the relevant date and had suffered two fractures. The compensation is reasonable and, therefore, there is no occasion for any modification.

7. In terms of order dated 11.12.2009, the appellant had deposited Rs.50,000/- with UCO Bank, Delhi High Court branch, which was initially held in deposit. The said amount with interest accrued thereupon was allowed to be released to the claimant by order dated 12.12.2011. The legal heir of the claimant will have the liberty to take out appropriate execution proceedings before the tribunal and enforce the balance award.

8. The appeal is disposed of in above terms.

R.K.GAUBA, J.

AUGUST 10, 2017/yg