$~R-414

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 6th November, 2017

\+ MAC.APP. 1023/2011

MUNICIPAL CORPORATION OF DELHI ..... Appellant

Through: Ms. Mansi Gupta, Adv.

versus

BRIJESH SINGH & ANR ..... Respondents

Through: None.

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

JUDGMENT (ORAL)

1. The first respondent was driving a three wheeler scooter bearing no. DL 1RG 802 (TSR) on 14.08.2007 in the area of SGT Nagar, at about 7.30 p.m. when he came to be involved in a collision with Truck bearing registration no. DL 1G 4220 (the truck) of the appellant Municipal Corporation of Delhi, now represented by North Delhi Municipal Corporation (upon trifurcation of the municipal body), it admittedly being driven by its employee Mehtab Singh (second respondent). He (the first respondent) instituted accident claim case (111/10/07) seeking compensation under Section 166 of Motor Vehicles Act, 1988 on 29.08.2007. The tribunal issued notices in answer to which both the parties shown as respondents in the case, including the appellant, appeared and filed their respective written statements. During the course of inquiry, however, there was neglect on the part of the appellant as it would appear through counsel or

representative only on some of the dates, there being no effort made on its part to examine any witness, the driver, however, having come up with his own evidence (as RW1), testifying on the strength of his own affidavit (Ex.RW1/A), this in rebuttal to the evidence of the claimant (as PW-1) on the strength of his affidavit (Ex.PW-1/A).

2. Upon conclusion of inquiry the tribunal, by judgment dated 18.07.2011, upheld the case that the accident had occurred due to the negligent driving of the truck by the second respondent. It awarded compensation in the total sum of Rs. 7,82,824/-, fastening the liability, inter alia, on the appellant to pay with interest in favour of the claimant, the said amount inclusive of Rs. 5,31,900/- towards loss of future earning capacity on the conclusion that the claimant had suffered permanent disability, his functional disability having been assessed to the extent of 50%.

3. The appeal is pressed on the ground that the disability certificate (Ex.PW-1/41) should not have been accepted without one of the members of the medical board which had issued it being examined and that the assessment of the tribunal on the question of functional disability is erroneous as there was no occasion for such disability to be treated as more than the disability of 42% reflected in the medical opinion.

4. Having heard the learned counsel for the appellant and having perused the record of inquiry before the tribunal, this Court finds no merit in any of the contentions that have been urged. The claimant, by his evidence, had proved the disability certificate which had been issued by a board of doctors of Babu Jagjivan Ram Hospital of the

Govt. of NCT of Delhi. No questions as to the genuineness of the said document were raised during the inquiry by the appellant. If appellant had any doubts, it could have called in some evidence when its turn came to disprove or discredit the same. No such effort having been made, it is most improper to now raise such an issue.

5. In the opinion of this Court, the view taken by the tribunal on the functional disability does not call for any interference. The tribunal has set out sound reasons including the fact that the claimant was earning his livelihood as a TSR driver and his incapacity relates to his lower limb, which renders him unable to continue with such avocation.

6. The appeal is dismissed.

7. By order dated 18.11.2011, the appellant had been directed to deposit the entire awarded amount with State Bank of India, Rohini Court Branch. By order dated 05.10.2012, 50% of such deposited amount was permitted to be released to the claimant. The balance lying at the disposal of the tribunal shall now be released to the claimant in terms of the impugned judgment. If there is any deficiency, the claimant would have the liberty to take out appropriate execution proceedings.

8. The statutory amount, however, shall be refunded.

R.K.GAUBA, J.

NOVEMBER 06, 2017
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