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

Decided on: 21st August, 2017

+ MAC.APP. 538/2009 and CM APPL.15522/2009

GYAN PRAKASH VERMA Appellant

Through: Nemo

versus

O.P. BANWARI & ORS Respondents

Through: Mr. Kanwal Chaudhary, Adv.
for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant was riding motorcycle on 29.07.2004 when it came to be involved in a collision with Maruti Esteem car bearing registration No.DL-4CF-5482 in the area of Red Cross Road, Near *Mazar*, PTI Building, New Delhi resulting in he falling down and suffering injuries. He filed accident claim case (Petition No.64/2004) on 16.03.2004 seeking compensation from the respondents on the allegations that the first respondent was negligent in driving the car, the second respondent admittedly being the insurer of the offending vehicle against third party risk for the period in question.

2. The Tribunal held inquiry and, by judgment dated 09.09.2008, returned finding that the accident had occurred due to negligence on the part of the first respondent. The said finding has attained finality as

it was not challenged. The Tribunal awarded compensation in the total sum of Rs.17,507/- fastening the liability on the insurer (the second respondent) calling it upon to pay with interest @ nine per cent (9%) per annum, the said amount inclusive of Rs.10,000/- towards pain and suffering and Rs.7,057/- towards cost of medical treatment.

3. The claimant filed the present appeal seeking enhancement expressing the grievance of compensation awarded being inadequate.

4. The appeal was put in the category of '*REGULARS*' as per order dated 08.04.2010. 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 the learned counsel for the second respondent.

5. Record perused.

6. Indeed, the Tribunal has not awarded just and fair compensation to the appellant. It fell into error by observing that the injuries were simple in nature ignoring the fact that it had noted in para 9 that the injuries included fracture of patella (right), fractured *ulna* (right) and other fractures in the body. The multiple fractures suffered are duly confirmed not only by the MLC (Ex.PW-1/3) but also by the discharge summary (Ex.PW-1/18) issued by Ram Manohar Lohia Hospital where the treatment was taken. The medical certificate (Ex.PW-1/17) duly proved confirmed that the appellant was unable to resume duties till 09.10.2003. There was, thus, a period of seventy one (71) days, for which the claimant could not work. It may be that he would have been paid salary by the employer. But then, there has been loss of

leave account since the claimant would be absent having availed leave on medical grounds. The corresponding loss has to be compensated in terms of money. Though, there is nothing on record to show that there is any permanent disability, much less any treatment (requiring expenditure) beyond 09.10.2003, given the nature of the injuries suffered, the non-pecuniary damages on account of pain and suffering are also deficient.

7. The claimant was working with TATA Consultancy Services Limited, an official (PW-2) from his employer having proved not only the leave account (Ex.PW-2/1) but also his pay slip (Ex.PW-2/3) for the month of July, 2003. The income for the said period as is reflected by the said document was in the sum of Rs.93,850/-. For the period of leave of absence, it would come to $(93850 / 31 \times 71)$ Rs.2,14,946.77 rounded off to Rs.2,15,000/-.

8. Having regard to the multiple fractures suffered, the compensation on account of pain and suffering is increased to Rs.75,000/-. Adding the actual proven expenditure of Rs.7,057/- incurred on account of medical treatment, the total compensation comes to $(2,15,000/- + 75,000/- + 7057/-)$ Rs.2,97,057/- rounded off to Rs.2,98,000/-.

9. The award is modified accordingly. It shall carry interest as levied by the tribunal.

10. The second respondent (insurer) is directed to satisfy the award by requisite deposit with the tribunal within thirty (30) days from today, making it available to be released to the claimant.
11. The appeal is allowed in above terms.
12. Pending application also stands disposed of.

AUGUST 21, 2017
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R.K.GAUBA, J.