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

Decided on: 27th September, 2017

+ **MAC APPEAL NO.878/2010**

SHIV SAHAY

.....Appellant

Through: Nemo.

versus

RAM AVTAR SINGH & ORS.

..... Respondents

Through: Mr. Manoj R. Sinha, Advocate
for R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant had instituted accident claim case (MACT No.285/2008) on 02.04.2007 seeking compensation on the averments that on 02.04.2006 he had suffered injuries on being hit by Qualis car bearing registration No.HR-55BT-9526, driven in a negligent manner by the first respondent, it being a vehicle registered in the name of second respondent and admittedly insured against third party risk for the period in question with the third respondent (insurer).

2. The tribunal held inquiry and, by judgment dated 08.09.2010, upheld the said claim and awarded compensation in the total sum of Rs.1,66,000/-, directing the insurer to pay with interest @9% per annum, the said amount having been calculated thus:-

Sl. No.	Head	Amount (in Rs.)
1.	Medical and treatment	10,000/-
2.	Loss of income	29,600/-
3.	Loss of earning power	71,040/-
4.	Loss of amenities	5,000/-
5.	Pain and suffering	35,000/-
6.	Conveyance /special diet & attendant charges	15,000/-
	Total compensation	1,65,640/- Rounded off to Rs.1,66,000/-

3. It is noted that the claimant had suffered fracture of the shaft of both femurs affecting the full motion of hip, knee and ankle joints. He appeared before a board of doctors of Deen Dayal Upadhyay Hospital of the Govt. of NCT of Delhi which evaluated his condition vide disability certificate (Ex.PW-4/A) on 28.05.2010. As per the said disability certificate he was found to be disabled to the extent of 30%, in relation to both lower limbs, the said assessment, however, being temporary, there being recommendation for re-evaluation after the treatment had been completed.

4. The tribunal has assessed the functional disability to the extent of 20% and made the award towards the loss of earning power accordingly. It is this element with which the claimant was dissatisfied, leading to the present appeal being filed, his prime contention being that since he is unable to work, his functional disability should have been assessed at a higher level.

5. The appeal was admitted by order dated 25.02.2011, and put in the list of 'Regulars' to be taken up in its own turn. On the matter being called out, there is no appearance for the appellant (claimant).

6. In the facts and circumstances noted above, particularly the fact that there was no clear medical opinion as to the permanent disability, if any, the case requires further inquiry. Thus, the claim case is remanded to the tribunal for further inquiry which shall be restricted to the question as to whether functional disability of the claimant is to be assessed at a higher level, and if so, as to whether the same is permanent in nature and further as to whether any further compensation is to be awarded on such account, over and above what was granted by the tribunal. In these circumstances, fresh adjudication by the tribunal shall be in continuation of the impugned judgment.

7. The parties are directed to appear before the tribunal for further proceedings on 30.10.2017.

8. Since the claimant/appellant has not appeared before the court at the final hearing, it will be proper that the tribunal issues a court notice to him to secure his presence for above said purposes. Needless to add, the amount already received in terms of the earlier judgment of the tribunal shall be liable to be adjusted.

9. The appeal is disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 27, 2017

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