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

Decided on: 22nd August, 2017

+ **MAC APPEAL No. 548/2009**

BALVINDER SINGH Appellant
Through: None.

versus

GOPAL KOTIAN Respondent
Through: None.

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

JUDGMENT (ORAL)

1. Accident claim case (suit no. 700/2004) was instituted by the first respondent (claimant) on 30.07.2004 impleading the appellant herein as the second respondent describing him as the registered owner of the car make Ambassador bearing registration no. DL 3CH 0623, which was statedly driven in a negligent manner by Mangal Singh, impleaded as first respondent before the tribunal. The claim for compensation for the injuries suffered was allowed by the tribunal, by judgment dated 11.08.2008, whereby compensation in the sum of Rs. 98,570/- was awarded with interest @ 9% per annum and the appellant herein, and the said Mangal Singh, were held jointly and severally liable.
2. The appellant filed the present appeal questioning the said judgment and award contending that the element of contributory

negligence was not considered, the award for loss of income for the period of leave of absence from duty was uncalled for and that the medical expenses towards treatment had been reimbursed by the department where the claimant was working also pointing out that Mangal Singh was acquitted in the corresponding criminal case.

3. The appeal was directed to be listed in “regulars” by order dated 31st May, 2010. At the hearing, no one has appeared for the appellant to assist.

4. It is noted from the tribunal’s record that Mangal Singh, the driver of the offending vehicle did not appear and was set *ex-parte*. The appellant had appeared on notice but midway the inquiry, he also stopped participating and was set *ex-parte* by order dated 10.04.2007. Thereafter, the impugned judgment was rendered on the basis of available evidence. It is noted that no evidence was brought on record by the appellant to prove the defence of contributory negligence. The result of the corresponding criminal case is inconsequential as liability in tort is tested on preponderance of probabilities. The loss of leave account also has to result in corresponding compensation. There is nothing to show that the medical expenses which have been taken into consideration by the tribunal were subject of any reimbursement.

5. The appeal is, thus, devoid of substance and is dismissed.

6. At the time of appeal being entertained, by order dated 12.11.2009, the appellant had been directed to deposit Rs. 73,570/-, after adjustment of the statutory amount of Rs. 25,000/-. The said amount was allowed to be released to the claimant by directions in the order dated 20.01.2010. The statutory amount deposited by the

appellant will also be released to the claimant for further satisfaction of his claim under the impugned award.

7. The appeal is dismissed. If there is deficiency, the claimant is at liberty to take out appropriate proceedings before the tribunal.

R.K.GAUBA, J.

AUGUST 22, 2017

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