

\$~R-419

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 7th November, 2017

+ MAC.APP. 1040/2011

SOUDAN SINGH

..... Appellant

Through: Mr. Navneet Goyal, Adv.

versus

SANJEEV KUMAR @ BABLOO & ORS. Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant was one of the ten persons moving as passengers in three wheeler scooter (TSR) bearing registration no. DL 1W 0120, when it met with an accident on 03.01.2008. He suffered injuries that included fractures of the backbone and right side ribs. It may be added here itself that he was travelling in the TSR as a passenger sitting next to the driver on the front seat. On his accident claim case (MACT 1118/10/08), instituted on 19.03.2008, the tribunal by its judgment dated 07.07.2011 held that the TSR driver (first respondent) was negligent. It also held that the claimant/appellant had also been guilty of contributory negligence to the extent of 25% since he had chosen to travel in the TSR, which was over-loaded, his place in the TSR being most inappropriate. The tribunal also found the appellant

to have suffered functional disability to the extent of 30%. It computed compensation as under:-

S.No.	Heads	Compensation
1.	Loss of earning capacity	Rs. 2,58,149/-
2.	Medical expenses	Rs. 1,86,288/-
3.	Pain & sufferings etc.	Rs. 1,50,000/-
4.	Special diet & conveyance charges	Rs. 20,000/-
	Total	Rs. 6,14,437/-

2. However, on account of contributory negligence, the insurer (third respondent) was directed to pay Rs. 4,60,828/- with interest @ 7.5 % per annum.

3. The appeal seeking enhancement is pressed only with the grievance that a composite sum of Rs. 1,50,000/- under the head of pain & sufferings, inconvenience, mental shock and loss of amenities etc. was inadequate and that rate of interest levied is unduly low.

4. It is noted that the evidence would show that the claimant had to undergo prolonged treatment including surgical procedures wherein steel plates and screws were inserted in his spinal column. He has been rendered permanently disabled on account of loss of senses in the lower limb, making him wear a belt. He would also be constrained to wear special shoes for the remainder of his life. In these circumstances, the grievance about the inadequacy of the award under the non-pecuniary heads of damages is found to be correct. The award of Rs. 1,50,000/- is treated as the award granted

towards pain & sufferings, inconvenience and mental shock. In addition, Rs. 1,00,000/- is added towards loss of amenities of life.

5. Thus, the total compensation would come to (6,14,437 + 1,00,000) Rs. 7,14,437/- and consequently the appellant will be entitled to receive as compensation an amount of $(7,14,437 \times \frac{3}{4})$ Rs. 5,35,827.75, rounded off to Rs. 5,36,000/- (Rupees Five lakh and thirty six thousand only).

6. Following the consistent view taken by this Court, the rate of interest is increased to 9% per annum (nine percent) from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*]

7. The insurer is directed to satisfy the enhanced award by requisite deposit with the tribunal within thirty days making it available to be released.

8. The appeal is disposed of in above terms.

NOVEMBER 07, 2017

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R.K.GAUBA, J.