

\$~R-127

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

Decided on: 24th August, 2017

+ MAC.APP. 536/2009

INDERJEET SINGH

..... Appellant

Through: Mr. O.P. Mannie, Advocate

versus

MANISH KUMAR & ORS

..... Respondents

Through: Mr. Arun Yadav, Advocate for
R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant had instituted accident claim case (Petition No.388/2008) on 29.08.2007 seeking compensation under Section 166 and 140 of the Motor Vehicles Act, 1988, impleading the respondents herein as parties on the averments that, while travelling on the pillion of motorcycle bearing registration No.DL-18N-6109, driven by his friend Yeshwant Singh (PW-2) on 02.03.2007, he had suffered injuries and permanent disablement due to a motor accident that had occurred at 6:45 p.m. at T Point at Police Nala Post in the area of Bharat Nagar, Delhi, it involving collision against truck bearing registration No.HR-51GA-1329, driven negligently by the first respondent.

2. It is stated that the second respondent is the registered owner of the truck which was insured against third party risk with the third

respondent. The claim case was contested by all the three respondents, the first two denying the negligence on the part of the truck driver, though admitting collision, attributing the collision to negligence on the part of the motorcycle driver.

3. The Motor Accident Claims Tribunal (the Tribunal), after inquiry, by judgment dated 26.08.2009 returned a finding that the claimant had failed to prove that the accident had occurred due to rash and negligent driving of the truck by the first respondent. With that finding having been recorded, the tribunal refused to go into the question of computation of compensation and left the issue to that effect unaddressed.

4. Though the appeal was filed seeking to assail the adverse finding recorded by the tribunal on the issue of negligence, at the hearing, the learned counsel for the appellant submitted, on instructions, that the claim case may be treated as one instituted on the principle of no fault liability under the structured formula in terms of Section 163-A of the Motor Vehicles Act, 1988, in that the claimant had suffered permanent disability, proof in which regard was adduced, *inter alia*, by disability certificate (Ex.PW-1/9), which has not even been considered by the tribunal.

5. In the aforementioned facts and circumstances of the case, the prayer deserves to be granted. The impugned judgment is set aside. The claim petition is treated as one brought under Section 163-A of the Motor Vehicles Act, 1988. The tribunal shall hold further inquiry by giving opportunity to the appellant/claimant to adduce additional

evidence, if any, followed by such opportunity to the contesting party to adduce evidence in rebuttal, if any, and, thereafter, render a fresh decision.

6. The parties are directed to appear before the tribunal for further proceeding on 25th September, 2017.

7. The appeal stands disposed of in above terms.

8. *Dasti.*

AUGUST 24, 2017

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R.K.GAUBA, J.



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