$~R-135A

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

Decided on: 23rd August, 2017

\+ MAC.APP. 556/2009

MOHD. MOID ...... Appellant

Through: Mr. Manish Maini, Advocate

versus

AMIT KARER & ORS. ..... Respondents

Through: Mr. J.P.N. Shahi, Advocate for R-3.

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

JUDGMENT (ORAL)

1. The appellant, described himself to be 41 years old at the relevant point of time, earning his livelihood by selling eggs as a hawker on the street, suffered injuries in a motor vehicular accident that occurred on 22.10.1995 due to negligent driving of motor vehicle described as car bearing registration No.DL-2C-B-2254, admittedly insured against third party risk for the period in question with the third respondent (insurer). On his accident claim case (old Suit No.929/01 and new suit No.629/2008), the tribunal held inquiry and, by judgment dated 25.07.2009, awarded total compensation in the sum of Rs.33,400/- with interest @ nine per cent (9%) per annum, calling

upon the insurer to pay, though granting recovery rights against the owner of the vehicle, it being the second respondent herein.

2. The appeal was filed seeking enhancement of the compensation, the prime contention urged at the hearing being that the tribunal has failed to give benefit of any award under the head of loss of income in future due to disability suffered and that the award under the head of pain and suffering and on account of permanent disability is inadequate.

3. Despite notice, having even earlier appeared, at the hearing there is no appearance on behalf of the registered owner of the vehicle or the driver (the second and first respondent respectively).

4. Having heard the learned counsel for the claimant/appellant and for the insurer and having gone through the record, this court finds merit in the arguments about the disability. The issue was trivialized by the tribunal by observations in (para 12) to the effect that even if there was a disability suffered it would not affect the livelihood since the claimant earns by selling eggs on a cart. This reasoning is wholly inappropriate. The tribunal, it appears, has also not taken care to see the record of the inquiry properly. It proceeded on the assumption that the disability had not been strictly proved. This is contrary to the state of evidence on record. The disability certificate dated 11.07.2001 had been duly proved as Ex.PW-1/2. It was issued by a board of doctors of All India Institute of Medical Sciences (AIIMS) and certified that the appellant has been rendered physically handicapped to the extent of thirty per cent (30%) in relation to the right lower limb, he being a

case of "*post traumatic deformity of right lower limb with pseudo arthrosis shaft of femur*".

5. Having regard to the nature of work in which the appellant was engaged and the disability having arisen due to fracture of the femur shaft of the right lower limb, the functional disability is assessed at ten per cent (10%). This must result in suitable award under the head of loss of income in future due to disability.

6. It is noted that the tribunal assumed the income of the claimant on the basis of minimum wages (Rs.1545/-) rounded off to Rs.1600/- per month at the relevant point of time. Since he was 41 years old, as per his own pleadings, the calculation would involve the multiplier of 14. The loss of future income due to disability, thus, works out at (1600/- x 10/100 x 12 x 14) Rs.26,880/- (Rupees twenty six thousand eight hundred eighty only).

7. Having regard to the fact that the claim of permanent disability has been accepted, the award under the head of pain and suffering is increased to Rs.50,000/-.

8. Adding the other components of compensation as awarded by the tribunal, the total compensation in the case comes to (26,880/- + 5,000/- + 50,000/- + 1,000/- + 1,000/- + 6400/-) Rs.90,280/- rounded off to Rs.91,000/- (Rupees ninety one thousand only).

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

10. The insurance company is directed to deposit the balance amount payable in terms of the modification ordered above with the tribunal within thirty (30) days, making it available to be released to the claimant. Needless of add, nothing in this order shall affect the recovery rights.

11. The appeal is allowed in above terms.

12. *Dasti.*

R.K.GAUBA, J.

AUGUST 23, 2017
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