

\$~R-149

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

Decided on: 30th August, 2017

+ **MAC APPEAL 635/2009**

RAM NIWAS

..... Appellant

Through: Ms. Aruna Mehta, Advocate

versus

RAM SINGH & ORS

..... Respondents

Through: Mr. Shoumik Mazumdar, Adv.
for R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant had suffered injuries in a motor vehicular accident that occurred on 09.07.2005 involving negligent driving of a truck bearing registration no.HR-38E-9885 and instituted accident claim case (petition no.04/2009) on 05.12.2005 seeking compensation.
2. The Motor Accident Claims Tribunal (Tribunal), after inquiry, by judgment dated 11.09.2009, upheld the claim for compensation on the principle of fault liability and awarded compensation in the sum of Rs.13,94,000/- in his favour directing the third respondent (the insurer of the offending vehicle) to pay though accepting its plea of breach of the terms and conditions of the insurance policy also granting it recovery rights against the driver and owner of the offending vehicle, they being first and second respondents herein. The compensation was calculated by the tribunal thus :-

Loss of Income	Rs.95,000/-
Medical treatment	Rs.3,24,000/-
Conveyance	Rs.15,000/-
Special Diet	Rs.10,000/-
Attendant Charges	Rs.20,000/-
Loss of earning capacity	Rs.7,29,600/-
Pain and sufferings / loss of enjoyment of life	Rs.75,000/-
Future treatment	Rs.1,50,000/-
Total compensation	Rs.14,18,600/-
Less interim compensation	(-) Rs.25,000/-
Total compensation	Rs.13,93,600/-
Rounded off	Rs.13,94,000/-

3. Though the appeal to seek enhancement was filed on various grounds, it is pressed only to seek enhancement of compensation under the non-pecuniary heads of damages of pain and suffering / loss of enjoyment of life awarded at Rs.75,000/- only.

4. The first and second respondents inspite of due notice and having even appeared earlier are not present at the hearing. The learned counsel for the appellant and for the insurance company have been heard and the record perused.

5. The appellant was working as a private tutor and as a principal of a school in Jahangir puri, Delhi. He holds the degrees of M.Com and B.Ed. and was at that time 35 years old when he suffered injuries which have rendered him permanently disabled, his functional disability having been assessed to the extent of 40%, this arising out of

crush injury of the right hand, the effect thereof being in the name of fixed flexion deformity right elbow, the movement of the said elbow being restricted, there also being stiffness in the fingers of the right hand.

6. In the given facts and circumstances, award should have been granted separately under the heads of pain and suffering and loss of amenities of life. The award of Rs.75,000/- as composite sum under the said two heads is inadequate. Having regard to the nature of injuries suffered instead of the award granted by the tribunal under the said two heads, Rs.1 Lakh each under the said two heads is granted. This would mean, there would be a total increase in the award in the sum of Rs.1,25,000/- (Rupees One Lakh and Twenty Five Thousand Only). Ordered accordingly. Needless to add, the enhanced portion of the award shall carry interest as levied by the tribunal.

7. The enhanced portion of the award with corresponding interest shall be paid by the insurance company by requisite deposit with the tribunal within 30 days. It shall be released by the tribunal in the form of interest bearing fixed deposit receipt in the nationalized bank in the name of the appellant for a period of seven years with right to draw monthly interest.

8. Needless to add, the recovery rights granted to the insurer remain undisturbed.

9. The appeal is disposed of in above terms.

R.K.GAUBA, J.

AUGUST 30, 2017/yg