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

Decided on: 31st October, 2017

+ **MAC.APP. 2/2015**

VIKAS CHAND & ANR Appellants

Through: Mr. Hem Kumar with
Mr. Rajiv Kumar, Advs.

versus

GAFFOR ALAM Respondent

Through: Mr. Naushad Alam, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. On Accident Claim case (Petition No.104/2011) instituted on 15.04.2011 by the respondent (claimant), the Tribunal, by judgment dated 01.10.2014, returned a finding that the claimant had suffered injuries in motor vehicular accident that had occurred on 22.01.2011 when he was hit by scooter bearing Registration No. DL 6S D 2621 (the scooter) driven in a negligent manner by the first appellant. Since the scooter is registered in the name of the second appellant, both the appellants were held jointly and severally liable to pay the compensation, though no proof of any insurance adduced, the amount of compensation having been determined in the total sum of Rs.4,67,400/- calculated as under:

Medical Expenses	:	Rs. 90,600/-
Pain and sufferings and enjoyment of life	:	Rs. 40,000/-
Special diet, Conveyance & Attendant Charges	:	Rs. 20,000/-
Loss of Income	:	Rs. 31,700/-
Loss of Future Income	:	<u>Rs. 2,85,100/-</u>
Total	:	<u>Rs. 4,67,400/-</u>

2. The appellants seek to assail the impugned judgment on the contention that there was contributory negligence on the part of the claimant as he was crossing the road at a place where there was no zebra crossing available. It is also the contention of the appellant that the Tribunal fell into error by accepting the disability certificate (Ex.PW3/A), this against another certificate (Ex.PW1/C) which had evaluated the disability to be temporary and to the extent of 45 per cent only.

3. The first contention on the question of contributory negligence was considered by the Tribunal but rejected, in the opinion of this Court, for some reasons. The evidence would show that a large number of public persons were crossing the road, there being no arrangement by the municipal authorities for any zebra crossing. It appears that some work of laying cables by a private company was underway in the vicinity of the place where the accident took place.

4. Having regard to the facts and circumstances prevalent at the relevant point of time, it was even a greater obligation on the part of the municipal authorities to take care of the safety of other road users, particularly the pedestrians. The finding on the issue of negligence, thus, does not call for any interference.

5. The disability certificate to which reference is made by the appellant is actually copy of such document (Mark PW1/C) which purports to have been issued by a board of doctors constituted by Civil Surgeon cum Chief Medical Officer, Araria, Patna. It does not even seem to bear any signatures and, therefore, is not authenticated. Even otherwise, no effort was made during the course of inquiry by the appellant to confront the claimant with this document. In contrast, the disability certificate (Ex.PW3/A) which has been the basis of the conclusions reached by the Tribunal was issued on 12.12.2013 by a board of doctors of Pandit Madan Mohan Malviya Hospital of the Government of NCT of Delhi. The functional disability has been assessed by the Tribunal to the extent of 30% in light of such certificate according to which the claimant's permanent physical impairment has been evaluated to be 51% in relation to the left lower and upper limbs. This finding does not call for interference.

6. No other point is pressed at the hearing.

7. The appeal is found devoid of substance and, therefore, dismissed.

8. By order dated 05.01.2015 read with order dated 22.04.2015, the appellants had been directed to deposit 50% of the amount of compensation which was released to the claimant. Out of such deposited amount 50% was allowed to be released to the claimant. The balance lying in deposit shall be released to the claimant in terms of the impugned judgment. The appellants shall be liable to pay the remainder of compensation payable by them in terms of the impugned judgment by requisite deposit with the Tribunal within 30 days. In

case of default on their part, the claimant is at liberty to take out execution proceedings.

9. The statutory deposit made by the appellants shall be made over to the Tribunal for being availed of so as to satisfy the remainder of the liability of the appellants to that extent.

10. The appeal is disposed of in above terms.

R.K.GAUBA, J.

OCTOBER 31 , 2017

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