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

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Date of Decision: 13th July, 2018

+ MAC.APP. 422/2018 & CM APPL. 17597/2018

NORTH DELHI MUNICIPAL CORPORATION Appellant

Through: Mr.D.S. Mahendru, Advocate along
with Mr.Dharamvir Sharma, Assistant
Director, North MCD

versus

GANESH KUMAR

..... Respondent

Through: Mr.Lalit Kumar Dhingra, Advocate

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of Rs.11,86,800/- has been awarded to the respondent.
2. On 27th August, 2009 at about 09:30 AM, the respondent was on duty with the appellant as an auto cleaner on vehicle No.DL-1GB-3326 at Civil Lines Auto Workshop when vehicle No.DL-1LD-4386 reversed without blowing any horn and crushed the respondent between the two vehicles. The police registered FIR No.289/2009 dated 27th August, 2009 under Sections 279/337 of IPC at P.S. K.W.Camp/Model Town.
3. The Respondent suffered fracture in temporal bone of both sides; depressed fracture of right temporal bone; fracture of right temoporo-

mandibular joint with difficulty in mouth opening; fracture of zygoma ; fracture of right orbit; brain parebyma concussions; fracture and dislocation both ear bones; decreased hearing in both ears; facial nerve palsy of both sides resulting in facial asymmetry; difficulty in closing eyes; expression less face; drooling of saliva and grievous injuries on head, eyes, ears, jaw and face. Respondent was taken to Sushruta Trauma Centre, where he remained admitted from 27th August, 2009 to 26th September, 2009. Respondent took further treatment in Dr. RML Hospital; Guru Nanak Eye Center, Bhandari ENT Hospital; Dr. Baba Saheb Ambedkar Hospital and Focus Imaging Center.

4. The injuries suffered by respondent was assessed by Dr. Baba Saheb Ambedkar Hospital which issued a certificate dated 4th July, 2011 (PW-2/2) according to which the respondent suffered 62% temporary physical, speech and hearing disability and re-assessment was recommended after a period of 2 years. On 23rd November, 2012, Dr. Baba Saheb Ambedkar Hospital re-assessed the disability of the respondent and issued a disability certificate dated 23rd November, 2012 (PW-2/1) stating that the respondent has suffered 71% permanent disability relating to auditory & head nerve injury.

5. The Claims Tribunal awarded Rs.50,000/- towards pain and suffering, Rs.25,000/- towards conveyance, Rs.25,000/- towards special diet, Rs.50,000/- towards loss of amenities of life and Rs.10,36,800/- towards the loss of earning capacity due to the disability. Total compensation awarded is Rs.11,86,800/-.

6. Learned counsel for the appellant urged at the time of hearing that the respondent is permanently employed with the appellant and has not suffered any loss of income. It is submitted that the respondent is not entitled to the

compensation for loss of income as awarded by the Claims Tribunal.

7. Learned counsel for the respondent urged at the time of hearing that the compensation awarded by the Claims Tribunal under the heads of loss on account of pain and suffering and loss of amenities of life is grossly inadequate. It is further submitted that no compensation has been awarded for disfiguration.

8. The respondent is present in Court and his condition has been seen. On 17th May, 2018, the respondent had handed over two photographs, one prior to the accident and one after the accident.

9. There is merit in the appellants contention that the respondent has not suffered any loss of income and therefore, the compensation of Rs.10,86,800/- awarded by the Claims Tribunal under the head of loss of earning capacity is liable to be set aside.

10. The compensation awarded by the Claims Tribunal under the heads of pain and suffering and loss of amenities of life is grossly inadequate. In *Master Mallikarjun v. Divisional Manager, The National Insurance Company Ltd.*, (2014) 14 SCC 396, the Supreme Court directed the non-pecuniary compensation towards pain and suffering and loss of amenities of life in respect of permanent disability of more than 60% upto 90% to be Rs.5,00,000/-. In the present case, the respondent has suffered 71% permanent disability relating to auditory & head nerve injury. The compensation for pain and suffering and loss of amenities of life on account of permanent disability is enhanced from Rs.50,000/- to Rs.5,00,000/-.

11. The Claims Tribunal has not awarded any compensation for disfiguration. The respondent has been completely disfigured and the compensation under the head of disfigurement is assessed as Rs.3,50,000/-.

12. The respondent is entitled to a total compensation of Rs.9,00,000/- (Rs.5,00,000/- for pain and suffering and loss of amenities of life + Rs.3,50,000/- for disfiguration + Rs.50,000/- for conveyance and special diet) along with interest at the rate of 9% per annum.

13. The appeal is allowed and the compensation of Rs.11,86,800/- awarded by the Claims Tribunal is reduced to Rs.9,00,000/- along with interest at the rate of 9% per annum from i.e. 16th September, 2009 i.e. date of institution.

14. The appellant has deposited Rs.16,02,148/- with the Registrar General of this Court in terms of order dated 17th May, 2018.

15. The Registrar General is directed to disburse Rs.14,00,000/- to the claimant by instructing UCO Bank, Delhi High Court Branch as under:

- (i) Rs.14,00,000/- be kept in 56 FDRs of Rs.25,000/- each for the period of 1 month to 56 months respectively with cumulative interest.
- (ii) The balance amount, after keeping Rs.14,00,000/-, in FDRs be released to respondent, Ganesh Kumar Bharadwaj by transferring the same to his savings bank account No.31127263172 with State Bank of India, Dilshad Garden Branch, Delhi, IFSC: SBIN0009370.
- (iii) At the time of maturity, the maturity amounts of the said FDRs shall be credited in the individual savings bank account of the respondent mentioned above.
- (iv) All the original FDRs shall be retained by UCO Bank, Delhi High Court Branch. However, a statement containing FDR number, FDR amount, date of maturity and maturity amount be furnished to respondent.
- (v) No loan or advance or pre-mature discharge shall be permitted without

the permission of this Court.

- (vi) State Bank of India, Dilshad Garden Branch shall permit the respondent to withdraw money from his savings bank account by means of a withdrawal form.

16. The appellant deposited Rs.50,000/- with the Court of concerned Metropolitan Magistrate at the time of seeking the release of the offending vehicle on *supardari* and the said amount has been kept in FDR with Corporation Bank in the name of the respondent. The concerned Metropolitan Magistrate is directed to refund the said FDR amount to the appellant.

17. The statutory amount be refunded back to the appellant.

18. Pending application disposed of.

19. List for reporting compliance by UCO Bank, Delhi High Court Branch on 17th August, 2018

20. Copy of this judgment be given *dasti* to learned counsels for the parties under signature of Court Master.

JULY 13, 2018

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J.R.MIDHA, J.