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

Decided on: 04th January, 2018

+ **MAC APPEAL 11/2013**

RAJENDRA PRASAD & ANR.

..... Appellant

Through: None

versus

SHYAM LAL

..... Respondent

Through: Mr. S.N. Parashar, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The first respondent (claimant) had instituted accident claim case (suit no.249/2010) on 28.03.2007 seeking compensation for injuries sustained and the permanent disability consequently suffered by him in a motor vehicular accident that had occurred on 08.01.2007 due to negligent driving by the first appellant (driver) of a motor vehicle described as a mail van bearing registration no.DL-1LP-1401 of the second appellant (owner).

2. The Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 04.07.2012, awarded compensation in the total sum of Rs.5,89,220/- in his favour directing the appellants to pay with interest at 9% p.a., the said amount inclusive of Rs.4,08,220/- towards medical expenditure, Rs.1,50,000/- towards loss of amenities of life

and pain and suffering, Rs.25,000/- towards conveyance and special diet and Rs.6,000/- for loss of income.

3. It may be mentioned here that during the course of proceedings before the tribunal, it was pleaded by the claimant that he was earning his livelihood by working as an *Umpire* with Delhi District Cricket Association (DDCA) at Firozshah Kotla Stadium, New Delhi at monthly income of about Rs.8,000/-. He produced an income certificate (Ex. PW1/3) issued by Honorary Secretary of the DDCA to substantiate the said claim. During the course of contest, the appellants also led evidence, *inter alia*, by examining Rajender Prasad (RW1) to prove another income certificate (Ex. RW1/5) issued by DDCA. It is on the basis of the said certificate (Ex. RW1/5) that it was argued that the claimant had filed a false affidavit to the effect that he had not been able to assume the work of Umpire / Scorer with DDCA after the incident. The appellant filed an application under Section 340 of the Code of Criminal Procedure, 1973 seeking criminal action to be initiated on the basis of such affidavit. The tribunal, however, was not impressed. It rejected the application for criminal action and accepted the claim for compensation granting the award which result is impugned through the appeal at hand.

4. The appeal was admitted and put in the list of 'regulars', to come up on its own turn as per order dated 11.09.2015. When it is called out on its own turn, there is no appearance on behalf of the appellants.

5. The learned counsel for the respondent has been heard and, with his assistance, the record has been perused. The plea taken in the

appeal that there is no independent eye witness to the accident leads the appellants nowhere. The claimant had appeared as his own witness (PW-1) to narrate the sequence of events leading to the collision between the scooter driven by him and the mail van of the appellant. Undoubtedly, the first appellant also appeared in the witness box (as RW1) primarily to contend that there was no collision between the two vehicles and reliance was also placed on the evidence of another witness Pramod Kumar (RW2). Given the fact that the tribunal has gone by the corroboration received from the record of the corresponding criminal case, this court finds no good reason to disturb the conclusions reached by the tribunal on the issue of involvement of the vehicle of the appellants and negligence on the part of its driver.

6. The court has compared the two certificates, one produced by the claimant (Ex. PW1/3) and, the other, (Ex. RW1/5) produced by the appellants. The learned counsel for the claimant is correct in pointing out that while the first certificate was issued on 05.05.2007, the second certificate was issued on 27.02.2009. The language employed in both the certificates is almost similar. It appears from both the certificates that the issuing authority had opted to use general language mentioning the period of engagement of the claimant with DDCA as a scorer / umpire for about a decade. Obviously, the certificates are not intended to spell out the exact period of such engagement, for the reason, the period would not have remained “ten years” even in 2009 after a lapse of two years of the issuance of the first certificate in 2007. As is further seen from the document filed with the reply to the application (CM 1754/2015), it being another letter dated 13.09.2013

issued by DDCA in response to a communication from the second appellant that the engagement of the appellant with DDCA was not in the nature of an employment, it was more of a periodical assistance rendered as and when occasion would arise for his services to be availed for umpiring or scoring in matches organized by the said entity.

7. Against the above backdrop, it is not fair on the part of the appellants to contend that the claimant is guilty of making any false statement on oath to the effect that he had not been able to resume the work of umpire / scorer.

8. The appeal is thus found to be devoid of substance and is dismissed.

9. In terms of order dated 07.01.2013, the appellant had been directed to deposit 60% of the awarded amount with up-to-date interest with UCO Bank, Delhi High Court Branch and by orders dated 01.05.2013 and 11.09.2015 some amount was directed to be released to the claimant. The balance with accrued interest shall now be released to the claimant. The appellant will be obliged to deposit the balance of its liability under the award by requisite deposit with the tribunal within 30 days making it available to be released to the claimant.

10. The statutory deposit, if made, by the appellant shall be refunded, after proof of the award having been satisfied is furnished.

R.K.GAUBA, J.

JANUARY 04, 2018

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