$~R-420 & R-421

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 7th November, 2017

\+ MAC.APP.1046 /2011

INCOME TAX DEPARTMENT ..... Appellant

Through: Mr. Rajendra Dangwal for Mr. Zoheb Hossain, Adv.

Versus

VIJAY SINGH @ VIJAY KUMAR ..... Respondent

Through: None.

\+ MAC.APP.453/2013

VIJAY SINGH @ VIJAY KUMAR ..... Appellant

Through: Mr. Rajendra Dangwal for Mr. Zoheb Hossain, Adv.

versus

INCOME TAX DEPARTMENT ..... Respondent

Through: None.

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

JUDGMENT (ORAL)

1. Vijay Singh @ Vijay Kumar (appellant in MAC appeal No. 453/13) had suffered injuries in a motor vehicular accident that occurred at about 9.00 p.m. on 14.07.2005. He (the claimant) instituted accident claim case (suit no. 88/2006) before the Motor Accident Claims Tribunal on 03.02.2006 on the averments that while

riding on his motorcycle he was hit by Maruti Gypsy bearing registration no. DL 6CA 7107 driven in negligent manner by Hiraman Singh Bhandari (the second respondent in these appeals), he having been deployed on the said vehicle as a driver by Income Tax Department (appellant in MAC Appeal No.1046/2011) of the Government of India, it concededly being the registered owner of the said vehicle.

2. The tribunal held inquiry and thereafter, by judgment dated 31.05.2011, held the driver of the Maruti Gypsy (second respondent) guilty of negligence. It was found that the claimant had suffered injuries which had rendered him permanently disabled, his disability having been certified (Ex.PW-3/1) by a board of doctors of Guru Tegh Bahadur Hospital to be 78% in relation to both lower limbs. The claimant had proved that he was earning his livelihood as a photographer, running his own photo studio. The tribunal held the functional disability to be to be extent of 50%. It also noted that on account of the injuries suffered, which were multiple fractures in both legs, the claimant had to undergo prolonged medical treatment, such treatment being indoor at least for three months and requiring surgical procedures including that for implant of fixator and nailing followed by another for removal of rods. The tribunal awarded total compensation in the sum of Rs. 6,43,920/-, calculating it thus:-

S.No.	Heads	Compensation
1.	Medical expenses	Rs. 93,330/-

2.	Loss of down payment etc.	Rs. 25,000/-
3.	Conveyance	Rs. 5,000/-
4.	Special diet	Rs. 10,000/-
5.	Loss of income	Rs. 18,270/-
6.	Prospective loss of income	Rs. 2,92,320/-
7.	Pain & sufferings, curtailment of enjoyment of life	Rs. 2,00,000/-
	Total	Rs. 6,43,920/-

3. The liability to pay the above amount of compensation was fastened on Income Tax Department (appellant in MAC Appeal no. 1046/2011). The entity on which the liability to pay compensation has been fastened, by its appeal (MAC Appeal no. 1046/2011), has questioned the award on the ground that there was no proper proof adduced as to negligence inasmuch as no eye witness had been examined. It also submits that the awards under the heads of pain & suffering, loss of down payment of the motorcycle and special diet are based on presumptions and assumptions and are excessive.

4. *Per contra*, the claimant, by his appeal (MAC Appeal no. 453/13), has sought enhanced compensation on the grounds that the tribunal wrongly adopted the minimum wages of unskilled worker and under-assessed the disability, the functional disability being total, to the extent of 100%, and further that the future prospects of increase in income had not been taken into account.

5. These appeals were put in the category of 'regulars', to come up on their own turn as per orders dated 03.02.2016.

When they are taken up, there is no appearance on behalf of the claimants.

6. The matter has been heard with the assistance of counsel for the appellant in MAC Appeal no. 1046/2011 and by perusal of the record.

7. The contentions in MAC Appeal No. 1046/2011 about there being no cogent evidence respecting negligence is incorrect. The claimant had appeared as his own witness (PW-1) to narrate the sequence of events leading to the occurrence. His evidence has gone unimpeached. There was no effort made by the parties which were contesting to put the driver of the Maruti Gypsy into the witness box to bring out facts to the contrary. In these circumstances, the plea to this effect is rejected.

8. The grievance of the claimant about the assessment of his income cannot be accepted. He did not lead any concrete evidence to prove the income he claimed to be accruing to him from his work as a photographer. Therefore, the view taken by the tribunal in notionally assessing the income with the help of minimum wages cannot be faulted.

9. The plea in appeal about the functional disability is again incorrect. The tribunal has given cogent reasons to assess the functional disability to the extent of 50%. Even the medical opinion would not substantiate the claim that the victim has been rendered totally immobile or disabled.

10. There is, however, merit in the plea about omission to add the element of future prospects. The tribunal has gone by the minimum wages (Rs. 3045/-) as the notional income and has calculated the loss

of future income due to the functional disability to the extent of 50% with the multiplier of 16. Having regard to the fact that the claimant was 31 years old on the relevant date, following the ruling of the Constitution Bench of the Supreme Court rendered on 31.10.2017 in *SLP (C) 25590/2014, National Insurance Company Ltd. Vs. Pranay Sethi and Ors.,* the claimant being a self-employed person, the element of future prospects of increase to the extent of 40% must be added.

11. Thus, the loss of income in future due to functional disability is recomputed as (3045 x 140 ÷100 ÷ 2 x 12 x 16) Rs. 4,09,248/-. Since the tribunal has awarded Rs. 2,92,320, under this head, the award would need to be increased by (4,09,248 – 2,92,320) Rs. 1,16,928/-. Upon this amount being added, the total compensation comes to (6,43,920 + 1,16,928) Rs. 7,60,848/-, rounded off to Rs. 7,61,000/- (Rupees Seven lakhs and sixty one thousand only). The award is modified accordingly.

12. The awarded amount shall carry interest as levied by the tribunal.

13. The Income Tax Department (in MAC Appeal No. 1046/2011) was directed, by order dated 25.11.2011, to deposit the entire awarded amount with upto date interest with the Registrar General within the period specified. By order dated 30.03.2012, Rs. 1,00,000/- out of such deposit was permitted to be released to the claimant. By further order dated 17.05.2013, the said order was modified and release of 50% of the deposited award inclusive of Rs. 1,00,000/- was allowed. Since the compensation has been increased, the balance lying in

deposit shall be released to the claimant. The appellant in MAC Appeal No. 1046/2011 shall discharge its liability towards the remainder in terms of the modified award by requisite deposit with the tribunal within thirty days.

14. Statutory amount made by the Income Tax Department, however, shall be refunded.

15. Both appeals are disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 07, 2017
nk

HIGH COURT OF DELHI
सत्यमेव जयते