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

% **Date of Decision:03rd NOVEMBER, 2016**

+ **MAC.APP. 366/2014 & CM 36101/2016**

THE NEW INDIA ASSURANCE CO. LTD. Appellant

Through: Mr.J.P.N. Shahi, Advocate

versus

SHRI RAKESH SOOD & ANR. Respondents

Through: Mr.S.N.Parashar, Advocate for
respondent no.1.

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.11,43,154/- has been awarded to respondent no.1.

2. The accident dated 5th December, 2007 resulted in the fracture of mid shaft of tibia and fibula right side, multiple fracture of ribs left side, fracture of left clavicle and fracture of right leg. Respondent no.1 underwent surgery of the right leg for fixation of plates at Maharaja Agrasen Hospital where he remained hospitalised from 6th December, 2007 to 13th December, 2007. On 5th July, 2008, respondent no.1 was admitted in Bhagwan Mahavir Hospital till 7th July, 2008 for removal of the plate fixed in the right lower leg and another operation was carried out and elizarov ring fixator was applied and corticotomy was done. The injuries suffered by respondent no.1 resulted in 30% permanent physical disability in relation to his right lower limb.

3. The Claims Tribunal awarded Rs.7,34,954/- towards loss of earning capacity, Rs.1,78,200/- towards loss of income during treatment and during recovery period, Rs.1,00,000/- towards medical expenses, Rs.30,000/- towards special diet, conveyance & attendant charges, Rs.50,000/- towards pain and sufferings, Rs.50,000/- towards loss of damages owing to disability and loss of amenities of life. The total compensation awarded is Rs.11,43,154/-.

4. Learned counsel for the appellant urged at the time of the hearing that the medical expenses of Rs.1 lakh has been reimbursed to respondent no.1 under a medi-claim policy and therefore, respondent no.1 is not entitled to the said amount. Reliance is placed on ***United Insurance Company Ltd. v. Patrica Jeans***, AIR 2002 SC 2607 and ***National Insurance Company Ltd. v. Deepmala Goel***, 2013 ACJ 2382. Learned counsel for the appellant further submits that the functional disability be reduced from 30% to 14%.

5. Learned counsel for respondent no.1 submits that the respondent no.1 incurred medical expenditure of Rs.1,38,828/- out of which Rs.98,265/- has been reimbursed under the medi-claim policy. It is submitted that medical expenses of Rs.40,563/- over and above the amount reimbursed by the insurance company be allowed to respondent no.1. It is further submitted that the compensation awarded to respondent no.1 under the heads of pain and suffering are on the lower side.

6. Respondent no.1 is present in Court and his condition has been seen. There is no infirmity in the functional disability of 30% taken by the Claims Tribunal. However, there is merit in the appellant's

contention that the medical expenses in respect of which the respondent no.1 has got reimbursement under the medi-claim policy cannot be claimed in view of the judgment of the Supreme Court in *United Insurance Company Ltd. v. Patrica Jeans* (supra) followed by this Court in *National Insurance Company Ltd. v. Deepmala Goel* (supra). The medical expenses of Rs.1 lakh allowed by the Claims Tribunal is therefore set aside. However, respondent no.1 shall be entitled to reimbursement of Rs.40,563/- incurred by respondent no.1 over and above the medical expenses paid to him under the medi-claim policy. Respondent no.1 shall be entitled to compensation of Rs.10,83,717/-

7. The appeal is partially allowed and the award amount is reduced from Rs.11,43,154/- to Rs.10,83,717/-. The appellant has deposited the 80% of the award amount with the Registrar General of this Court in terms of order dated 28th April, 2014 out of which 70% has been released to respondent no.1 and the balance amount is lying in fixed deposit with UCO Bank, Delhi High Court Branch.

8. The Registrar General is directed to disburse the balance award amount lying in fixed deposit to respondent no.1 by instructing UCO Bank, Delhi High Court Branch to discharge the FDR and release the FDR amount to respondent no.1.

9. With respect of 70% award amount already released to respondent no.1 is lying in four fixed deposits bearing Nos.15530310459614, 15530310459621, 15530310459638 and 15530310459645 for Rs.1,60,876/- each. Respondent no.1 has filed CM 36101/2016 for premature discharge of the said FDRs for the

marriage of his son fixed in February 2017. CM 36101/2016 is allowed and UCO Bank, Delhi High Court Branch is directed to prematurely discharge the FDRs and release the amount to respondent no.1 by transferring the same to his savings bank account.

10. The appellant shall deposit the balance award amount with UCO Bank, Delhi High Court Branch by means of a cheque drawn in the name of UCO Bank A/c Rakesh Sood within four weeks.

11. Upon the aforesaid deposit being made, UCO Bank shall release the FDR amount to respondent no.1 by transferring the same to his savings bank account.

12. Application is disposed of.

13. Copy of this judgment be given *dasti* to counsel for the parties under the signature of the Court Master.

NOVEMBER 03, 2016

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J.R. MIDHA, J.