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

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Date of Decision : December 18, 2015

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MAC.APP. 35/2012

NEW INDIA ASSURANCE CO LTD Appellant

Through: Mr.D.D.Singh and Mr.Navdeep
Singh, Advocates.

versus

TARANDEEP SINGH ANAND & Ors. Respondents

Through: Ms.Neha Kapoor, Advocate for R-1
with R-1 in person.

AND

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MAC.APP. 285/2012 & CM No.4817/2012

TARANDEEP SINGH ANAND Appellant

Through: Ms.Neha Kapoor, Advocate with
appellant in person.

versus

ASGAR KHAN & ORS Respondents

Through: Mr.D.D.Singh and Mr.Navdeep
Singh, Advocates for R-3.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J. (ORAL)

CM No.4817/2012 in MAC.APP No.285/2012

1. For the reasons stated in the application, 53 days' delay in filing the appeal is condoned.

2. Application stands disposed of.

MAC.APP.No.35/2012 & MAC.APP.No.285/2012

1. These two appeals arise out of the award dated 12.10.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹ 10,58,101/- along with interest @ 7.5% per annum from the date of filing of this petition till its realization was awarded to Tarandeep Singh Anand who suffered injuries in a motor vehicular accident which occurred on 11.2.2006.

2. On appreciation of evidence, the Claims Tribunal found that the claimant/injured suffered injuries while he was going on his motor cycle and was hit by the TSR No. DL IR G 3713 which was being driven in a rash and negligent manner by Asgar Khan, the driver. The learned Tribunal further observed that the injured was earning ₹1.5 lakhs per annum. He had remained confined to bed for about six months and had also spent on conveyance, special diet. There was loss of income as he could not perform his job. The learned Tribunal awarded a total compensation of ₹10,58,101/- to the claimant along with interest @ 7.5 % p.a. from the date of filing the petition.

3. For the sake of convenience, the Appellant in MAC.APP.35/2012 shall be referred to as the Insurance Company, whereas the Appellants in MAC. APP. 285/2012 shall be referred to as the claimants.

4. The finding on negligence has not been disputed by the learned counsel for the Insurance Company at the time of hearing of the appeal. Even no appeal has been preferred by the owner/driver of the offending vehicle, hence, the same has attained finality.

5. On behalf of the Insurance Company, Mr.D.D.Singh, Advocate has submitted that the claimant is seeking enhancement of the compensation in cross appeal bearing MAC.APP.No.285/2012 on account of diminishing memory and constant headache and has tried to connect the head injury with the accident dated 11.2.2006. Referring to the statement of PW-3, Dr. K.K. Kumra, DDU Hospital, Mr.D.D.Singh, Advocate has submitted that in the said disability certificate Ex.PW1/2, the percentage of the disability has been shown as 46% whereas Dr. Kumra specifically stated that disability as per the certificate is only 6% and the said certificate has been tampered with. While referring to the another disability certificate showing the disability to the extent of 24% it has been submitted that the same has been issued by RTRM Hospital by the doctor who has not treated the claimant and thus could not have certified the disability. The disability in this case being 6% as per Dr.K.K.Kumra, the treating Doctor, the Court should have awarded the compensation in view of that certificate only.

6. Learned counsel for the insurance company has contended that before the Tribunal there was no evidence to prove that the claimant suffered head injury. During pendency of appeal, the application under Order XLI Rule 27 was allowed by this Court. Dr.Rajesh Acharya, Senior Consultant, Department of Neurosurgery was examined on 19.12.2013 who has made his statement without producing the record. Even otherwise the prescription Ex.AW1/A of Dr.Rajesh Acharya reflect that the head injury was suffered on 12.01.2006 whereas the date of accident in this case is 11.02.2006 which shows that the head injury had nothing to do with the compensation claimed in this petition which was suffered a month prior to suffering injuries in this accident.

7. Learned counsel for the insurance company has also urged before this Court that the claimant in this case had worked just for about three months before suffering injuries in this accident. In that circumstance, the learned Tribunal should have granted compensation calculating the same as per minimum wages payable to a matriculate. He has submitted that the claimant has not placed on record any document regarding his qualification as 12th pass or having acquired any skill, hence the compensation awarded by the learned Tribunal being exorbitant, be reduced.

8. Ms.Neha Kapoor, Advocate appearing on behalf of the claimant has vehemently urged that it is a case where the claimant who was just 21 years old at the time of accident had not only suffered disfigurement of face but also due to head injury he is suffering from diminishing memory. The claimant was employed as Executive Operation in a Call Centre i.e. Global Ventedge Pvt. Ltd. on annual package of ₹1.5 lakhs. He had just worked for about three months when he met with an accident. For the job of Executive Operation, it is necessary that the person should be fluent in English with the capacity to bear the responsibility as Executive Operation.

9. Learned counsel for the claimant has contended that no tampering was done with the disability certificate issued by DDU Hospital. The disability certificate issued by RTRM Hospital was obtained under orders of this Court in view of the dispute raised by the Insurance Company about the percentage of disability suffered by the claimant. Dr.J.P.Singh from RTRM hospital has been examined as PW-5 and duly cross examined by the insurance company. Now it is not open to the insurance company to dispute the credibility of the disability certificate or the extent of disability certified by RTRM Hospital and duly proved by examining Dr.J.P.Singh. Further the father of the claimant himself is an old and handicapped person as has been

brought to the notice of learned Tribunal by producing disability certificate of the father of the claimant.

10. In this case, the main question to be determined is about the nature and extent of the injuries as well the extent of disability suffered by the claimant and consequent loss of amenities of life and future prospects. The main contention of the insurance company revolves around the disability certificate Ex.PW1/2 issued by DDU Hospital, disability certificate Ex.PW5/A issued by RTRM Hospital as well as the date of suffering the head injury i.e. prior to this accident or during this accident. For this purpose, it is necessary to first refer to the testimony of PW-3 Dr.K.K.Kumra, CMO (NFSG), Ortho Department, DDU Hospital and PW-5 Dr.J.P.Singh, Junior Specialist (Ortho), RTRM Hospital and then to the medical treatment record filed by the claimant. Both the doctors i.e. PW-3 Dr.K.K.Kumra and PW-5 Dr.J.P.Singh are specialised in Ortho. No Neuro Surgeon was member of the Board that issued the disability certificate. Thus, the disability caused due to head injury is not certified.

11. During pendency of these appeals, Dr.Rajesh Acharya, Senior Consultant, Deptt. of Neurosurgery, Sir Ganga Ram Hospital has been permitted to be examined, whose statement shall be referred to hereinafter.

12. PW-3 Dr.K.K.Kumra, CMO (NFSG), Ortho Department, DDU Hospital has made statement to the following effect:-

'Being member of the Medical Board I had examined the petitioner, Sh.Tarandeep Singh Anand and had assessed his permanent disability.

I have brought the record from the hospital. I have also seen the photocopy of disability certificate Ex.PW1/2.

The permanent disability of the said patient as per my examination and our record, is 60% in relation to left upper

limb, it being a case of united fracture olecranon with left elbow joint stiffness.

Said disability was never opined as 46% as is reflected in Ex.PW1/2. The original disability certificate was issued for disability of 06% as per our record and not for 46%. There appears to be some manipulation in that context regarding the percentage of the disability in the said photocopy of disability certificate.

The functional disability of the patient regarding loss in earning capacity in the light of the said permanent disability would be negligible, as per my opinion.'

13. PW-5 Dr.J.P.Singh, Junior Specialist (Ortho) RTRM Hospital has stated that he had examined the claimant on 25.02.2010 and proved the disability certificate as Ex.PW5/A which bears his signature at point-B. He has further stated that the claimant has a disability of 24% for a period of two years from the date of issue of disability certificate and that the disability of the claimant is temporary and his condition may or may not improve in future.

14. Dr.Rajesh Acharya, Senior Consultant, Deptt. of Neurosurgery, Sir Ganga Ram Hospital has made statement to the following effect :-

'Mr.Taran Deep Singh Anand, appellant is my patient, he still comes to me occasionally in relation to his treatment. He sustained head injury after road accident on 11.02.2006.

I have brought the medical record of the appellant since 2006. He was operated for right fronto temporal extra dural hematoma on 12.02.2006. He was successfully operated and he was discharged on 17.02.2006. At the time of surgery, he was drowsy and it was not possible for us to access the condition of his memory. After the operation he was fully conscious, alert and moving all four limbs.

The present status of the appellant is that he is irritated and has impaired memory. In my opinion, the cause of impaired memory is the head injury sustained during the aforesaid accident. In my opinion generally in such cases, there are not chances of recovery.'

15. In the prescription slip Ex.AW1/A dated 16.01.2012 on the right side at the top, the doctor has written '*FTC Head Injury (12.1.2006)*'. Thus, this is the document on the basis of which the learned counsel for the insurance company is trying to claim that the head injury was suffered on 12.01.2006 whereas the date of accident is 11.02.2006.

16. I have perused the entire treatment record filed before the learned Tribunal. Sh.Tarandeep Singh Anand – the claimant when filed his affidavit as PW-1 also tendered following documents :-

- Ex.PW1/1 - Salary certificate*
- Ex.PW1/2 - Disability certificate*
- Ex.PW1/3 - Copy of FIR*
- Ex.PW1/4 - Copy of site plan*
- Ex.PW1/5 - Copy of seizure memo of TSR*
- Ex.PW1/6 - Mechanical Inspection report of motorcycle*
- Ex.PW1/7 - Policy of offending vehicle*
- Ex.PW1/8 - Fitness certificate of the offending vehicle*
- Ex.PW1/9 - Challan receipt of the offending vehicle*
- Ex.PW1/10 - MLC of the claimant*
- Ex.PW1/11 - Photographs of the claimant*
- Ex.PW1/12 - Medical bill amounting to ₹90,000/- of Sir Ganga Ram Hospital*
- Ex.PW1/13 - Discharge summary*
- Ex.PW1/14 - Hospital bills, chemist bills as well of X-ray bills*
- Ex.PW1/15 - Disability certificate of father of the petitioner*
- Ex.PW1/16 - Certificate issued by Dr.Rajesh Acharya showing that Claimant was under treatment for about one year*
- Ex.PW1/17 - Medical bills*

Ex.PW1/17A- Prescriptions
Ex.PW1/18 - Prescriptions
Ex.PW1/19 - Copy of Ration Card'

17. With a view to ascertain as to when the head injury had been suffered, I would like to refer to the following documents:-

- (i) Ex.C-1 is the copy of the chargesheet alongwith its annexures filed before the Tribunal by Investigating Officer, PS Hari Nagar in case FIR No.77/2006 under Sections 279/338 IPC & 3/181 MV Act. In the chargesheet, Asgar Khan – Driver of the offending vehicle has been shown as accused and Tarandeep to be the injured. The date and time of the accident as mentioned in the FIR is 11.02.2006 at about 10.00 pm.
- (ii) As per the letter addressed to CMO, DDU Hospital by ASI Zora Singh – the Investigating Officer, he visited DDU Hospital to record the statement of the injured but at 10.50 pm the injured was declared ‘unfit for statement’.
- (iii) The MLC of the claimant/injured prepared at DDU Hospital reveals that he was brought to the hospital on 11.02.2006 at 10.15 pm by CAT-214 and details of all the injuries suffered by Tarandeep Singh are referred on the MLC which includes the injury on the head. MLC also bear endorsement dated 11.02.2006 that patient absconded from Casualty on 11.02.2006 at 11.00 pm.
- (iv) From the receipt Ex.PW1/14 it is proved that after taking the patient Tarandeep Singh from DDU Hospital, the family brought him to Kukreja Hospital & Heart Centre Pvt. Ltd., Rajouri Garden at about 11 p.m. on 11.02.2006. The receipt Ex.PW1/14 is in respect of Ambulance Charges, CT Scan Consultation Fees as well as Emergency and Admission Charges and after realising the gravity of the situation and the nature of the head

injury suffered by the patient Tarandeep Singh, to save his life, the family shifted the patient to Sir Ganga Ram Hospital which fact finds corroboration from the discharge summary Ex.PW1/13 on which date of admission is recorded as 12.02.2006.

(v) On 13.02.2006 the Investigating Officer visited Sir Ganga Ram Hospital but again the patient was declared unfit for statement and ultimately the FIR was recorded on 13.02.2006 on the basis of statement of Vijay Kumar – eye witness.

(vi) The discharge summary dated 17.02.2006 Ex.PW1/13 records the clinical history as under:-

*‘20-year male admitted with alleged H/O of RTA at around 10:30 pm on 11.02.06 followed by **sustained head injury** and injury to left upper limb. H/O LOC and Nasal bleed present. No H/O seizure, ENT bleed and vomiting. Initially he was managed in some other hospital, now shifted to SGRH for further management. **CT head plain was done which revealed right fronto temporal EDH with mass effect.**’*

The claimant in his affidavit has stated that they had to seek early discharge from Sir Ganga Ram Hospital as they were unable to afford the costly treatment in that hospital.

Here at this stage, it is also necessary to mention that the discharge summary Ex.PW1/13 prepared on 17.02.2006 is by Department of Neurosurgery, Unit-I, Sir Ganga Ram Hospital headed by Dr.A.D.Sehgal. Dr.Rajesh Acharya, who has been examined before this Court on 19.12.2013 as a witness, is from Unit-I of Department of Neurosurgery, Sir Ganga Ram Hospital. Dr.Rajesh Acharya was member of the team of Neuro Surgeons of Unit-I who conducted surgery on head of the claimant for the injuries suffered by him in the accident on 11.02.2006.

(vii) As per the prescription slip Ex.PW1/17A, the claimant apart from head injury had also suffered fracture olecranon with left elbow joint stiffness and remained under treatment of Dr.V.K.Nijhawan, M.S. (Ortho).

(viii) As per the prescription slip Ex.PW1/18 the claimant has also remained under treatment of Dr.Rajesh Acharya right from the date of suffering the head injury till Dr.Rajesh Acharya was examined as a witness during the pendency of these appeals.

18. The various prescription slips and consistent treatment record from Sir Ganga Ram Hospital suggests that mention of date of accident as 12.01.2006 on the prescription Ex.AW1/A might have been wrongly given by the claimant/patient due to diminishing memory.

19. Much emphasis has been laid by learned counsel for the appellant/insurance company on the disability certificate Ex.PW1/2 issued by DDU Hospital claiming that it has been issued by the hospital that treated the claimant. This contention is noted here to be rejected for the simple reason that from DDU Hospital the patient was taken in Ambulance at about 11.00 pm which is noted in the MLC itself and after getting the necessary investigation done at Kukreja Hospital & Heart Centre Pvt. Ltd., the patient/claimant was taken to Sir Ganga Ram Hospital for specialised treatment. Thus, it does not lie in the mouth of insurance company to claim that it is a case of suffering head injury prior to the accident or that Dr.Rajesh Acharya being not the treating doctor, his statement is of no significance. Rather, it is a case where the patient/claimant was initially taken by the police in CAT-214 to DDU Hospital and all the injuries including head injury find mentioned in the MLC. From the photographs placed on record before the learned Tribunal and treatment record from Sir Ganga Ram Hospital, it is established that the claimant suffered injuries on

his head and elbow and had undergone surgeries at Sir Ganga Ram Hospital. All the injuries were suffered by the claimant in the accident that had taken place on 11.02.2006.

20. It is surprising that despite life threatening injuries suffered by the claimant at young age of 20-21 years, he had been certified to be suffering disability to the extent of 6% by the DDU Hospital with no reference to the damage caused to the nervous system of the claimant on account of head injury.

21. It may be noted here that the claimant was directed to appear in the Court to assess his present condition. He is suffering from diminishing memory as noted at Sir Ganga Ram Hospital and All India Institute of Medical Sciences. Thus, to ascertain the percentage of disability, the disability certificates obtained from DDU Hospital or RTRM Hospital and the treatment record of DDU Hospital where he was removed by police in CAT-214 do not reflect the disability due to head injury. The investigation carried out at Kukreja Hospital and Heart Centre where he was removed in Ambulance by his family and also at Sir Ganga Ram Hospital is sufficient to ascertain the nature and extent of injuries suffered by him and damage caused due to head injury which has made him dependent on his family at young age of 20-21 years.

22. I have no hesitation to hold that statement of Dr.Rajesh Acharya, Senior Consultant, Department of Neurosurgery, Sir Ganga Ram Hospital has to be given due weight as he had been treating the claimant right from 12.02.2006 when he was shifted in that hospital in a critical condition and also performed the surgery. The claimant is undergoing treatment at Sir Ganga Ram Hospital from Dr.Rajesh Acharya even as on date.

23. The next question to be considered is how far the learned Tribunal is justified in assessing the income of the claimant. In this regard, it is sufficient to note that PW-4 Sh.Dinesh Kumar Rathor from Global Ventedge Pvt. Ltd. had been examined by the claimant who had proved the appointment letter and income certificate of the claimant as PW4/A and B. If the claimant could not work for longer duration in that company, he cannot be blamed for that. It is not that at that young age, he quit the job of his own. Rather it is a case where due to the extensive head injury and injury on his hand, he could not resume his duties and perhaps by the time he was able to stand on his legs, vacancy might have been filled.

24. In **Kavita v. Deepak & Ors, Civil Appeal No.5945/2012 decided on 22.08.2012**, the Supreme Court laid down that an attempt should always be made to award adequate compensation not only for physical injury and treatment but also for the loss of earning and inability to lead a normal life and enjoy amenities, which would have been enjoyed but for the disability caused due to the accident.

25. In **Raj Kumar v. Ajay Kumar & Anr., 2011 (1) SCC 343**, the Supreme Court brought out the difference between permanent disability and functional disability resulting in the loss of earning capacity. It was laid down that the compensation on account of loss of earning capacity has to be granted in accordance to the nature of job undertaken by the victim of motor accident. Paras 11 and 14 of the report are extracted hereunder:

“11. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on

appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. 2010 (10) SCC 254 and Yadava Kumar v. D.M., National Insurance Co. Ltd. 2010 (10) SCC 341.

x x x x x x

14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity."

26. In the case **Arvind Kumar Mishra v. New India Assurance Company Limited**, (2010) 10 SCC 254, the Supreme Court dealt with the case of disability of an engineering student. The Supreme Court observed

that while awarding compensation in personal injury cases, an attempt should be made to put the injured in the same position as he was as far as money is concerned. In para 9 of the report, the Supreme Court held as under:

“9. We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was insofar as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered.”

27. In another case **Nizam’s Institute of Medical Sciences v. Prasanth S. Dhananka & Ors**, (2009) 6 SCC 1, the Supreme Court emphasized that cases of serious injuries in motor vehicle accident are worse than the death cases because the victim and his family suffers throughout life. Para 90 of the report is extracted hereunder:-

“90. At the same time we often find that a person injured in an accident leaves his family in greater distress vis-à-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity.”

28. The claimant is the only child of his parents. He had not been in any job after suffering injuries in this accident. His father is not only old but

also disabled as is brought on record from the disability certificate. Even in the Court on each date of hearing the disability of the father of the claimant can be seen. He must be hoping his son to support him in this age but the destiny played a cruel joke. Now it is other way round and parents are taking care of their young son due to his diminishing memory and inability to earn livelihood for himself. When the claimant appeared before the Court, he was questioned about his daily routine and it was revealed that he is assisting his father in attending the customers at their shop selling cold drinks, snacks etc.

29. Learned counsel for the claimant has placed on record the treatment record of the claimant to show that the claimant is under continuous treatment for the head injury suffered in this accident.

30. From the medical record of the claimant from Sir Ganga Ram Hospital as well the follow up treatment from various other hospital and interaction with the claimant in Court, it is established that after suffering the head injury in the accident on 11.02.2006, the claimant is not able to lead a normal life. It is informed that claimant is the only son and both his parents are not even able to walk without support. The claimant is fully dependent on his parents even for his daily routine and cannot travel alone as he even cannot locate his own house unless he is left in the street where his house is situated.

31. Thus, it may not be feasible to compensate the claimant for the loss of amenities he has suffered and the kind of life he may have to lead by remaining dependent on his family.

32. In the given circumstances of the case, I enhance the compensation as tabulated hereunder:-

<i>Under the head</i>	<i>Compensation granted by Tribunal</i>	<i>Compensation enhanced by this Court</i>	<i>Compensation to which the claimant now entitled</i>
Medical Expenses	₹1,20,101/-	₹1,00,000/-	₹2,20,101/-
Special Diet, Conveyance & attendant charges	₹50,000/-	---	₹50,000/-
Loss of Income	₹75,000/-	₹1,25,000/-	₹2,00,000/-
Pain & Suffering	₹40,000/-	₹60,000/-	₹1,00,000/-
Loss of amenities of life	₹50,000/-	₹50,000/-	₹1,00,000/-
Loss of earning capacity	₹6,48,000/-	---	₹6,48,000/-
Physical disfigurement due to permanent disability	₹50,000/-	₹50,000/-	₹1,00,000/-
Reduction of matrimonial aspects	₹50,000/-	₹1,00,000/-	₹1,50,000/-
Total	₹10,83,101/-	₹4,85,000/-	₹15,68,101/-
Less (-) interim compensation	₹ 25,000/-	---	₹25,000/-
TOTAL	₹ 10,58,101/-		15,43,101/-

33. Accordingly, the claimant Tarandeep Singh Anand is awarded enhanced compensation of ₹4,85,000/- alongwith interest @ 7.5 % per annum from the date of filing the claim petition.

34. The insurance company is directed to deposit the enhanced compensation with interest within six weeks. It is directed that the enhanced compensation of ₹4,85,000/- shall be kept in the form of four FDRs for a period of five years, six years, seven years and eight years respectively. The

claimant can withdraw the quarterly interest accrued thereon to enable him to meet the cost of consultation and medicines.

35. MAC.APP.No.35/2012 filed by the insurance company is dismissed.

36. MAC.APP No.285/2015 stands allowed in above terms.

37. Statutory amount, if any, deposited by the insurance company at the time filing of MAC.APP. No.35/2012, shall be refunded to the Insurance Company.

38. LCR be sent back alongwith copy of this order.

39. A copy of this order be given dasti to learned counsel for the parties, as prayed.

(PRATIBHA RANI)
JUDGE

DECEMBER 18 , 2015

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