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

Date of Decision: 2nd March, 2016

+ **MAC.APP. 44/2014**

TATA AIG GENERAL INSURANCE CO LTD Appellant

Through: Ms. Shantha Devi Raman and Mr.
Arbaaz Hussain, Advs.

versus

SH DIPANJAN GHOSH & ORS Respondents

Through: Mr. Ajay Kumar Sharma, Adv. for R-
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CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On the petition brought by the first respondent under Section 166 and 140 of Motor Vehicles Act, 1988 (MV Act), registered as suit No.313/2012, the Tribunal granted compensation in the sum of Rs.48,20,420/- (increased to ₹49,20,420/- vide order dated 13.01.2014) with interest at 9% per annum from the date of filing of the petition (03.07.2012) till realization in his favour calling upon the appellant insurance company to pay in terms of third party insurance taken out in respect of offending vehicle Santro car bearing No.DL 3CBQ 2681. The compensation, thus awarded, includes Rs.39,60,000/- on account of potential/future income, it having been calculated on the basis of the existing income of the claimant (Rs.55,000/- per month) on the multiplier of 15 (having regard to his age of more than 55

years), on the basis of 40% of functional disability suffered due to amputation of left lower limb.

2. The insurance company has come up in appeal pointing out that the above calculation of loss of future earnings was wrong in that the claimant has continued to be in the employ of Tek Mahindra Ltd. in the position of senior technical associate and, thus, there has been no loss of earnings which fact was noted while denying any compensation towards loss of income.

3. *Per contra*, the counsel for the claimant argued that the assessment of the Tribunal is correct and there is no cause for interference.

4. In the face of the fact that there is no loss of employment and the claimant has continued to be in service, there is substance in the contention raised by the insurance company. But it cannot be forgotten that there would be loss of future earnings arising out of the disability suffered, once the claimant retires. Ordinarily, the employees even in private service are superannuated at the age of 60 years. In these circumstances, the loss of future earnings due to disability requires to be recalculated on the multiplier of 9.

5. Having regard to the fact that there is bound to be increase in the income over the period the claimant continues to serve in the present employment, the element of future prospects would have to be added. Since the loss of future earning capacity is to be computed with reference to the income that would be available at the time of superannuation, the current income is increased by 30% and, thus, the notional income on which future earning capacity may be assessed is calculated as $(55,000 \times 130 \div 100)$ ₹71,500/- per month. The loss of earnings at 40% disability comes to $(71,500 \times 40 \div 100)$ ₹28,600/-. On the multiplier of 9, the total loss of future

earnings comes to $(28,600 \times 12 \times 9)$ ₹30,88,800/- rounded off to ₹30,90,000/-. Since the Tribunal calculated this portion of the compensation at ₹39,60,000/-, the total compensation ordered to be paid has to be reduced by $(39,60,000 - 30,90,000)$ ₹8,70,000/-. In this view, the compensation is reduced to $(49,20,420 - 8,70,000)$ ₹40,50,420/- rounded off to ₹40,51,000/-. It shall carry interest at 9% per annum as directed by the Tribunal.

6. The Tribunal had directed ₹43 lakhs to be put in fixed deposit receipts in the name of the claimant releasing the balance for his immediate needs. By order dated 17.01.2014, the insurance company had been directed to deposit 80% of the awarded amount with up-to-date interest with Registrar General and, from out of the said deposit, 40% was allowed to be released to the claimant in terms of the impugned judgment, the balance having been kept in fixed deposit receipt with UCO Bank, Delhi High Court branch, New Delhi for a period of six months to be renewed periodically. Since the amount of compensation has been reduced, it is directed that the entire balance now payable shall be put in fixed deposit receipt in the name of the claimant for a period of six years with liberty to draw monthly interest. The Registrar General shall arrange for the balance payment to be released to the claimant in terms of the order modified as above refunding the balance, if deposited in excess, to the insurance company along with statutory deposit, if any.

7. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 02, 2016/VLD