

\$~1

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

Date of Decision: 03rd May, 2016

+

MAC.APP. 92/2014

ROYAL SUNDARAM ALLIANCE INSURANCE CO LTD

..... Appellant

Through: Ms. Suman Bagga & Mr. Pankaj
Gupta, Advs.

versus

SH NADEEM AHMAD & ORS

..... Respondents

Through: Mr. Moinuddin, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The first respondent (the claimant) had suffered injuries in a motor vehicular accident that occurred on 28.10.2009 when the motorcycle which he was riding was hit by a truck bearing registration no.HR-38N-8223 (the offending vehicle), proved at the hearing to have been driven in a negligent manner. As a result of the injuries suffered, right leg below knee of the claimant had to be amputated and he had undergo prolonged treatment which included skin harvesting and graft. On the claim petition (MAC petition no.1242/2010), instituted on 08.04.2010, the motor accident claims tribunal (the tribunal) awarded compensation in the sum of ₹10,49,600/- in favour of the claimant and directed the appellant/insurance company to pay

the same with interest at the rate of 9% per annum, it having concededly issued third party insurance policy in respect of the offending vehicle for the period in question.

2. The tribunal assessed the compensation as under:-

Compensation towards pain and sufferings	Rs. 1,25,000/-
Loss of amenities and enjoyment	Rs. 1,25,000/-
Loss of expectation of life and disfiguration	Rs. 1,50,000/-
Loss of earning capacity due to injuries	Rs. 3,88,800/-
Loss of earning of petitioner for two months @9,000/-	Rs. 18,000/-
Expenses towards medical bills	Rs. 1,22,781/-
Compensation towards prosthetic leg charges	Rs. 1,00,000/-
Compensation towards conveyance and special diet	Rs. 20,000/-

3. The insurance company by appeal at hand, questions the computation of loss of earning capacity due to functional disability assessed to be to the extent of 15% on the ground that while calculating, on the basis of finding that the claimant was employed as an embroider with M/s Ashpriya Impex Pvt. Ltd. at a salary of ₹9000/- per month, the future prospects of increase to the extent of 50% were added. This, in the submission of the insurance company, was erroneous. The insurance company also argues that the awards under the non-pecuniary heads of damages are unduly high.

4. Having heard counsel on both sides and having perused the record, this court finds no merits in the appeal. The evidence led before the tribunal included the statement of Anand Verma (PW3), the personnel manager with M/s Ashpriya Impex Pvt. Ltd. who proved the salary payable to the claimant on account of such employment vide document (Ex.PW1/13). The evidence on record clearly shows that the claimant has been in regular employment of

the said company in a skilled job. Having regard to the terms of engagement with the private employer, the future prospects of progressive rise in the income are inherent in the said engagement. Therefore, the argument against the award on account of loss of earning capacity are unmerited.

5. Having regard to the nature of injuries, his permanent disability in relation to the right lower limb assessed by the medical board, to the extent of 75%, has not been accepted. Instead, the tribunal concluded that the functional disability resulting in loss of earning capacity to be to the extent of 15% only. Taking into the injuries suffered and amputation of right leg below knee and pain & suffering that would have been undergone, besides the difficulties that the claimant is expected to face in life, non-pecuniary damages as awarded by the tribunal do not call for any interference.

6. By order dated 29.01.2014, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General within the period specified and out of the same 80% was allowed to be released, the balance kept in the form of FDR. The Registrar General shall take steps to release the balance as well to the claimant.

7. The statutory amount, if deposited, shall be refunded

8. The appeal is dismissed.

R.K. GAUBA
(JUDGE)

MAY 03, 2016
ssc