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

Date of Decision: 31.05.2016

+ **MAC.APP. 62/2008**

ORIENTAL INSURANCE CO. LTD.

..... Appellant

Through Mr. Amit Gaur, Adv.

versus

BALRAM YADAV & ORS.

..... Respondent

Through None

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The first respondent (claimant), then aged about 45 years, employed in Delhi Police but on deputation with Intelligence Bureau in the Ministry of Home Affairs suffered injuries in a motor vehicular accident that occurred on 28.02.2005 involving driving of Tata tempo bearing registration No.DL 1LB 9663 (offending vehicle) admittedly insured against third party risk for the period in question with the appellant insurance company (insurer). He filed an accident claim case (CS No.121/2007) on 24.10.2005 seeking compensation under Sections 166 & 140 of Motor Vehicles Act, 1988 (MV Act). On the basis of inquiry, by judgment dated 01.11.2007, the motor accident claims tribunal (tribunal) upheld the case of the claimant about

injuries having been suffered and he having been rendered permanently disabled to the extent of 25%. These findings have since attained finality as the same were not challenged further. The tribunal awarded compensation in the sum of ₹8,86,655/- with interest in favour of the claimant and directed the insurer (appellant) to pay, the amount having been calculated thus :

	(Rupees)
(i) Pain and suffering	50,000/-
(ii) Reimbursement of Medical expenses	23,789/-
(iii) Special diet	20,000/-
(iv) Conveyance	10,000
(v) Loss of income	92,866/-
(vi) Expenses for future treatment	35,000/-
(vii) Compensation for permanent disability	6,30,000/-
(viii) Loss of enjoyment and amenities	25,000/-

TOTAL COMEPENSATION	Rs.8,86,655/-

2. The insurer is in appeal questioning the awards under the heads of pain & suffering, loss of income, compensation for permanent disability and expenses for future treatment.

3. Arguments have been heard. Tribunal's record perused.

4. It is noted that the injuries suffered by the claimant included three fractures between knee to waist, injuries of the left foot, the surgical procedures and treatment undergone having resulted in iron plates being inserted in his left leg and thumb and two toes of the left foot having been amputated rendering him permanently disabled. A board of doctors of Dr. Ram Manohar Lohia Hospital, New Delhi, by certificate (Ex.PW1/62) dated 04.04.2006 declared that he is a case of amputation of great toe, second and third toe through METARSO phalangeal joint of left foot with old united

fracture of left femur with ½ shortening, thereby rendering him permanently disabled to the extent of 25% in relation to whole body.

5. The claimant at the time of the injuries being suffered was employed in police force. It is inherent in the nature of job undertaken that he would be expected to always remain physically fit. Disability obviously is not acceptable to the rigor of the duties required to be performed in police service.

6. In these circumstances, the assessment made by the tribunal in accepting the extent of functional disability to the extent of 25%, cannot be faulted even though no witness had been examined to prove the effect on promotional avenues.

7. The objection against the award of loss of income is raised on the ground that it was not proved whether the leave of 199 days for which the compensation was granted by the tribunal was paid leave or unpaid leave. The absence of clarity in this regard in the evidence, in the opinion of this Court, is inconsequential. A government employee enjoys the privilege of leave to be availed as per his convenience and for his own needs or pleasure. Spending leave on medical treatment for injuries in a motor vehicular accident cannot conceivably be called a choice he exercised voluntarily. The loss of leave account, it being of value, thus had to be suitably compensated.

8. The insurer questions the award of Rs.35,000/- towards future medical expenses but ignores the fact that this was on the basis of evidence of Dr. S C Sood (PW3) and Dr. Amit Kumar (PW5). Given the nature of

injuries suffered, neither the said award towards future treatment nor the damages on account of pain & suffering can be said to be exaggerated.

9. Thus, the appeal is unmerited and liable to be dismissed.

10. By order dated 20.02.2008, stay against the enforcement of the award only to the extent of Rs.92,866/- (loss of income) was granted. The said interim order was made absolute on 09.11.2009 with further condition that in the event of the appeal being dismissed, the said amount would be payable with such higher interest as may be considered proper by the Court.

11. In view of the above conclusions, the interim stay is vacated. It is directed that the balance amount of the compensation awarded by the tribunal shall now be paid by the appellant with interest at 12% per annum from the date of filing of the petition till complete satisfaction of the award. The insurer (appellant) is directed to pay the balance amount in terms of this modification by requisite deposit with the tribunal within 30 days of this judgment making it available to be released to the claimant.

12. Statutory deposit, if made, shall be refunded after the award has been fully satisfied.

13. The appeal is disposed of in above terms.

14. A copy of this judgment shall be sent to the claimant by registered post at his given address.

(R.K. GAUBA)
JUDGE

MAY 31, 2016/VLD