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

**Date of Decision: 10th March, 2016**

\+ **MAC.APP. 143/2012 & CM No.15756/2012**

IFFCO TOKIO GEN INSURANCE CO LTD ..... Appellant
Through: Mr. Arbaaz Hussain, Adv. for Ms. Shantha Devi Raman, Adv.

versus

MAHENDRA VIKRAM & ORS ..... Respondent
Through: Mr. R K Sonkiya, Adv.

\+ **MAC.APP. 892/2015**

MAHENDRA VIKRAM ..... Appellant
Through: Mr. R K Sonkiya, Adv.

versus

IFFCO TOKIO GENERAL INSURANCE CO LTD ..... Respondent
Through: Mr. Arbaaz Hussain, Adv. for Ms. Shantha Devi Raman, Adv.

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

**JUDGMENT**

**R.K.GAUBA, J (ORAL):**

1. Both theses appeals arise out of judgment dated 15.11.2011 in suit No.293/2010 of Motor Accident Claims Tribunal (the tribunal) and thus

have been taken up and heard together and are being decided through this common judgment.

2. Mahendra Vikram (the appellant in MAC.APP.No.892/2005 and the first respondent in MAC.APP.No.143/2012) suffered injuries in a motor vehicular accident that occurred at about 7 PM on 06.01.2009 involving collision between scooter No.DL 3S U 2527 (the scooter) driven by him and car bearing No.DL 2C AJ 0175 (the offending vehicle) statedly driven by Manish Shankar Jha (who was impleaded as the first respondent before the tribunal). The offending vehicle was admittedly insured against third party risk with IFFCO Tokio General Insurance Co. Ltd. (appellant in MAC.APP.No. 143/2012 and the first respondent in MAC.APP.No. 892/2005) for the period in question.

3. The tribunal assessed the compensation as under :

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|---|---|---|
| *"Medical expenses* | *:* | *Rs. 10,000/-* |
| *Pain & sufferings & Enjoyment of life* | *:* | *Rs. 25,000/-* |
| *Special diet, attendant & conveyance charges* | *:* | *Rs. 20,000/-* |
| *Loss of income* | *:* | *Rs. 1,76,000/-* |
| *Loss of future income* | *:* | *Rs. 5,91,400/-* |
| *Total* | *:* | *Rs. 8,22,400/-* |

4. The aforementioned amount was awarded as compensation with interest at 9% per annum from the date of filing of the petition till realization and the insurance company was called upon to indemnify and pay.

5. The insurance company, by its appeal, questions the award of ₹5,91,400/- towards loss of future income pointing out that the claimant has continued to be in the service of the same employer in the capacity of Marketing Manager and thus there was no loss of income to the extent granted. The claimant, by his appeal, contends that there has been loss of upward progression of his career and therefore it cannot be said that there has been no loss of future income. He also states that the compensation awarded by the tribunal is inadequate as no amount was granted for loss of amenities or disfigurement, pointing out, in this context, the disability certificate dated 11.07.2011 issued by board of doctors of Pt. Madan Mohan Malaviya Hospital of the Govt. of NCT, Delhi.

6. It is noted that the disability certificate dated 11.07.2011 affirmed that the claimant had suffered permanent disability to the extent of 16% in relation to his left lower limb and left upper limb. Though the certificate would not clearly spell out the reasons, from the affidavit (Ex.PW1/A) of the claimant submitted before the tribunal, it is found that due to the injuries suffered he had to undergo surgical procedure in the left leg wherein a steel rod was implanted. Injuries have resulted in restricted movement of the lower limb and of one hand.

7. Though the tribunal noted that the disability certificate showed the disability to have been assessed in relation to the two limbs, it assumed the said disability to be equivalent of the functional disability in relation to the whole body. Given the nature of injuries suffered, this Court is not inclined to interfere with the view taken by the tribunal in the case at hand. But the fact remains that the evidence clearly shows that the claimant has continued

to be in the same employment and thus it cannot be said that the loss of future income is to be calculated with reference to the date of the accident. A separate award for loss of income for the period of eight months on the ground that the claimant had to remain on leave of absence has been made. The submission in the cross-appeal that there has been loss of upward progression in the career cannot be accepted in absence of any formal proof. Instead, the documents submitted reflect that the loss of upward movement in his career is more on account of non-performance on the professional side.

8. In above view, the loss of future income will have to be computed with reference to the date when the claimant would superannuate. Ordinarily, such event would occur when he attains the age of 60 years. In this view the loss of future income deserves to be calculated on the multiplier of 9, rather than 14, as done by the tribunal.

9. The income proved by the claimant before the tribunal was ₹22,000/- per month. The loss of income to the extent of 16% thus would work out to (22,000 x 16 ÷ 100) ₹3,520/-. On the multiplier of 9, the loss of future income comes to (3,520 x 12 x 9) ₹3,80,160/-.

10. There is merit in the contention of the claimant, however, that compensation deserves to be granted additionally on account of loss of amenities and disfigurement. The amounts of ₹25,000/- each under these heads are hereby added. Thus, while the loss of future income is to be reduced by (5,91,400 – 3,80,160) ₹2,11,240/-, adding ₹50,000/- as above would mean that the award is to be reduced by (2,11,240 – 50,000)

₹1,61,240/-. In above view, the compensation awarded in the case is reduced to (8,22,400 – 1,61,240) ₹6,61,160/-, rounded off to ₹6,62,000/-. It shall carry interest as levied by the tribunal.

11. The insurance company had been directed by order dated 07.02.2012 in its appeal to deposit the entire awarded amount with up-to-date interest with the Registrar General. From out of the said deposit, ₹2 lakhs was released by order dated 07.09.2012. The Registrar General shall now calculate the amount payable to the claimant in terms of the award modified as above and release the same to him in terms of the directions in the impugned judgment, refunding the excess lying in deposit with statutory deposit, if made, to the insurance company.

12. Both appeals stand disposed of in above terms.

**R.K. GAUBA**
**(JUDGE)**

**MARCH 10, 2016**
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