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

+ **MAC.APP. 157/2016**

NATIONAL INSURANCE CO LTD Appellant

Through: Mr. Pankaj Seth, Adv.

versus

BALRAM & ORS Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **19.02.2016**

CM No. 5736/2016 (exemption)

Exemption allowed, subject to just exceptions.

MAC appeal no.157/2016 & CM No. 5735/2016 (stay)

The insurance company though admitting its liability to indemnify questions the computation of compensation awarded in favour of the first respondent by the motor accident claims tribunal (the tribunal) by judgment dated 26.11.2015 for injuries suffered by him in a motor vehicular accident that occurred on 09.04.2006 involving bus bearing registration no.DL-1PB-1236 concededly insured with the appellant/insurance company against third party risk for the period in question.

The tribunal awarded compensation in the sum of ₹4,64,556/- calculated thus:-

Medical expenses	₹20,632/-
Conveyance charges	₹ 40,000/-
Special diet	₹ 60,000/-
Loss of earning during treatment	₹1,43,924/-
Pain & suffering	₹1,00,000/-
Loss of enjoyment of life	₹1,00,000/-
Total compensation	₹4,64,556/-

The insurance company first questions the loss of earnings during the treatment on the grounds that the compensation for a period of 44 months was uncalled for. It then questions the non-pecuniary damages under the heads of conveyance charges, special diet, pain and sufferings and loss of enjoyment of life contending that the same are on the higher side.

Two paragraphs of the impugned judgment need to be quoted in extenso:-

“It is stated on oath by petitioner that he remained hospitalized from 09.04.2006 to 27.04.2006. A major surgery was conducted upon him and steel implants were inserted in his left leg. He was again admitted in Dr. Baba Saheb Ambedkar Hospital on 27.05.2006 and was discharged on 02.06.2006. Another operation was conducted upon him for skin grafting. His condition got deteriorated due to infection and he was hospitalized again on 22.11.2008 and remained there till 05.12.2008. A surgery was again performed on his left leg, during this period. His leg remained plastered since the day of accident till 05.02.2009. He got treatment of private doctor at

Panipat (Haryana) also for the purpose of dressing and physiotherapy etc. His treatment is still continuing. He has incurred a sum of ₹50,000/- on medical treatment, ₹40,000/- on conveyance and ₹60,000/- towards special diet.

According to petitioner, he was 45 years of age at the time of accident and was earning ₹4,000/- per month, by doing private job. He remained confined to bed till 2009. He was still unable to do any work and to earn his livelihood. There is no other evidence except his own deposition to verify that petitioner was earning ₹4,000/-. Even if, his earnings are taken as equal to minimum wages of an unskilled labourer, same was ₹3271/- per month at the relevant time. Even if, the petitioner is presumed to have remained unable to work from 09.04.2006 (date of accident) till end of year 2009), he could have earned ₹1,43,924/- (₹3271x44). This amount is granted to him as loss of earning during treatment.”

There is no contest to the findings on facts as noted by the tribunal in the afore-extracted observations. Having regard to the nature of injuries suffered and the prolonged period of treatment, it is clearly proved that the claimant had to undergo repeated surgical procedure to the extent that his lower limb remained in plaster from 09.04.2006 to 05.02.2009. The calculation of loss of earnings for the period in question cannot be grudged. For the same reasons, the damages awarded under non-pecuniary heads are just and proper. Therefore, the appeal is dismissed *in limine*.

The statutory deposit, if made, shall be refunded.

R.K.GAUBA, J

FEBRUARY 19, 2016/ssc