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

Date of Decision: 28th April, 2016

\+ **MAC.APP. 487/2013**

TATA AIG GENERAL INSURANCE CO LTD ..... Appellant

Through: Mr. Arbaaz Hussain, Adv.

versus

SH SUNIL & ORS ..... Respondents

Through: None.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The first respondent (the claimant) suffered injuries in the form of fracture of clavicle bone and of first to the eleven ribs in a motor vehicular accident that occurred on 04.04.2012 involving negligent driving of a motor vehicle described as bearing registration no.DL-10CE-1116 (the offending vehicle) admittedly insured against third party risk with the appellant/insurance company (the insurer). He instituted an accident claim case (suit no.235/2014) on 04.05.2012 seeking compensation impleading, amongst others, the insurer. The tribunal held inquiry and, by judgment dated 18.03.2013, accepted the case of the claimants that he had suffered

disability to the extent of 5% in relation to whole body on account of the fracture of clavicle rib fracture on the right side of the chest, this finding having been returned on the basis of disability certificate dated 20.02.2013 (page 127 of the tribunal's record) issued by board of doctors of Hindu Rao hospital.

2. The tribunal accepted the case of the claimant that he was working as an employee of M/s Mayank Dental Lab at a salary of ₹12,000/- per month and found that he had remained under treatment for three months. Thus, loss of income was compensated in the sum of ₹36,000/-. On account of loss of future income due to 5% disability a lump sum of ₹1,00,000/- was granted. The tribunal further added ₹9,000/- towards special diet and conveyance and ₹2,50,000/- under non-pecuniary heads of damages, the total compensation awarded being ₹3,59,000/-.

3. The insurer has come up in appeal questioning the computation of compensation.

4. There is merit in the contention that mere submission of photocopy of what purports to be a salary certificate could not have been accepted as good proof of gainful employment or income resulting therefrom. In absence of better proof, the tribunal should have gone by the minimum wages prevalent at the relevant point of time to assess the loss of income. Since the minimum wages at the relevant time were in the sum of ₹6656/- per month, loss of income is calculated as (6656x3) ₹19968/-, rounded off to ₹20,000/-.

5. The loss of future income with 5% disability would work out as (6656x5/100) ₹333/- per month. Since the claimant was 40 years old, on the

multiplier of 15, the total future income loss is computed as (333x12x15) ₹59940/-, rounded off to ₹60,000/-.

6. Given the nature of injuries suffered and the extent of disability that has ensued, the non-pecuniary damages are undoubtedly high. The same are reduced to ₹1,25,000/-, put together towards pain & suffering, loss of amenities of life and loss of expectation of life. Adding the component of ₹9,000/- granted towards special diet and conveyance, the total compensation payable in the case comes to (9000+20,000+60,000+1,25,000) ₹2,14,000/-.

7. The award is reduced accordingly. Needless to add, it shall carry interest as levied by the tribunal.

8. By order dated 24.05.2013, the insurance company had been directed to deposit the entire awarded compensation with up-to-date interest with the Registrar General and out of such deposit 50% was allowed to be released, the balance kept in fixed deposit receipt with UCO Bank, Delhi High Court branch for a period of six months to be renewed periodically. The Registrar General shall calculate the amount payable to the claimants in terms of the award modified as above and release the same to them refunding the excess in deposit with statutory deposit, if any, to the insurance company.

9. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 28, 2016/ssc