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

Date of Decision: 12th February, 2016

+ **MAC.APP. 463/2010**

RELIANCE GEN INSURANCE CO LTD Appellant
Through Mr. Shoumik Mazumdar, Adv.

versus

KALIPADA GIRI & ORS Respondent
Through Mr. O N Sharma, Adv. for R-1

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The insurance company brought this appeal to question the computation of compensation awarded by the Motor Accident Claims Tribunal (the Tribunal) by judgment dated 26.02.2010 on claim petition under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) of the first respondent, registered as suit No.469/2008, for injuries suffered in motor vehicular accident that occurred on 23.04.2007 involving truck bearing registration No.HR 38H 5306 concededly insured with it against third party risk for the period in question on the ground that the functional disability of the claimant was wrongly assessed to the tune of 45% qua the whole body.

2. By the impugned judgment, the Tribunal awarded compensation in the sum of Rs.17,08,758/- out of which the compensation on account

of loss of earning capacity due to disability was assessed to the tune of Rs.10,80,000/-. It is this calculation which has given rise to the grievance urged by the appellant.

3. The Tribunal held inquiry into the claim petition in the course of which the claimant examined himself as PW1, *inter alia*, on the strength of his own affidavit (Ex.PW1/A). in the said affidavit he stated that he was engaged in the business of *pan* trading (trading in beetle leaves) and in that course had earned an income of Rs.1,10,980/- during financial year 2004-05, Rs.1,39,580/- during financial year 2005-06 and Rs.1,95,675/- during financial year 2006-07. He proved the said income by placing on record copies of the income tax returns (ITRs) as exhibits. He also stated in the affidavit that on account of permanent disablement that he had suffered, he shall not be able to do business as progressively and to growing profits since it requires extensive travelling which he has been rendered incapable of. Noticeably, the affidavit was sworn on 01.02.2008 and submitted before the Tribunal on 07.02.2008.

4. The claimant also examined Dr. Sharad Agarwal, Orthopaedic Surgeon of Max Balaji Hospital (PW2) under whose care he had been treated from 23.04.2007 till discharge on 19.06.2007 and thereafter as an outdoor patient in September, 2007. Further, he proved disability certificate (Ex.P3), which has been issued by a board of doctors constituted by Chief Medical Officer, Ghaziabad on 28.02.2008, through Dr. Anil Kumar Singh, Consultant Orthopaedic Surgeon, Ghaziabad (PW3). The disability certificate (Ex.P3) shows that the appellant had suffered amputation of right little and index fingers and also suffered stiffness in the thumb and joints of the right lower limb.

The evidence of PW3 would show that in the accident he had suffered crush injury of right hand degloving injury of right thigh with multiple pelvic fracture including both acetabulum fracture. When PW3 was examined he was called upon by the appellant to clarify the extent of the disability which had been certified by the board of doctors vide document Ex.P3. PW3 explained that the disability thus certified is qua the entire body.

5. The Tribunal accepted the evidence of PW3 to above effect and proceeded to conclude that the disability suffered by the appellant is 45% of permanent nature qua the entire body and having regard to the age of 33 years, assessed the loss of future earnings on the basis of multiplier of 16, assuming the average income of the appellant to be in the region of Rs.1,50,000/-.

6. It has been argued by the insurance company that since the disability certificate (Ex.P3) was silent as to whether it is in relation to whole body, the oral word of PW3 in this regard could not have been treated as sufficient proof to give finding on functional disability. It was argued that mere amputation of two fingers of the right hand would not render a person disabled on permanent basis to the extent of 45% in his capacity to earn. It was further submitted that the appellant has not shown by any positive evidence, including in the nature of income tax returns furnished for the financial years subsequent to 2006-07, to demonstrate that there had actually been a loss of earnings.

7. Though the respondent (claimant) initially argued that the insurance company cannot be allowed to raise any grievance with regard to the computation in absence of any permission under Section 170 of

MV Act, when it was pointed out by the counsel for the appellant that such a permission was actually taken by order dated 21.08.2008, the counsel for the claimant did not press the said issue any further. Even otherwise, in view of the law laid down by the Supreme Court in *United India Insurance Co. Ltd. v. Shila Datta* (2011) 10 SCC 509, the said objection is unmerited.

8. It is true that loss of two fingers of the upper limb by itself cannot be a reason to conclude that there has been a loss of functional ability to the extent of 45%. But, as is shown by the disability certificate (Ex.P3), the amputation of the said two fingers was not the sole reason which resulted in medical opinion to such effect. The evidence of PW2 and PW3 read collectively in the light of the disability certificate shows that on account of fracture of the pelvic region, there has been a permanent adverse effect on the mobility of the appellant and, therefore, the opinion given by PW3 during the inquiry, which was not even attempted to be challenged or refuted by any cross-examination cannot be given a go by.

9. The contention raised by the insurance company is without substance and is liable to be rejected.

10. Though the appeal was filed on certain other grounds as well, at the hearing, the learned counsel for the appellant clarified that no other point is being urged.

11. By order dated 10.08.2010 the insurance company had been directed to deposit the entire awarded amount with Registrar General of this Court and upon said deposit being made the claimant was to be entitled to receive the same in terms of award upon furnishing requisite

security. There has, however, some confusion as some of the subsequent orders indicate that only part of the deposited amount has been actually released. The Registrar General shall now release the balance lying in deposit to the claimants in terms of the impugned award.

12. Statutory deposit, if made, shall be refunded.
13. The appeal is disposed of in above terms.
14. Tribunal's record be returned.

R.K. GAUBA
(JUDGE)

FEBRUARY 12, 2016
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