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

Date of Decision: 14th March, 2016

\+ MAC.APP. 686/2012 & CM APPL. 11083/2012, 11085/2012

NEW INDIA ASSURANCE CO LTD ..... Appellant

Through: Mr. Sameer Nandwani, Adv.

versus

BALWAN SINGH & ORS ..... Respondents

Through: Mr. S. N. Parashar, Adv. for R-1.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The first respondent suffered injuries in a motor vehicular accident that occurred at about 09:15 PM on 23.03.2006 in the area of village Kuanwala opposite Sharab Factory Uttranchal involving truck bearing registration no.UHQ-0857 (the offending vehicle) which was admittedly insured against third party risk with the appellant/insurance company (the insurer). He brought the claim petition before the motor accident claims tribunal (the tribunal) which registered it as MACT case no.272/10/2006 wherein he impleaded, in addition to the insurer, the driver and owner/insured in respect of the offending vehicle as respondents. The tribunal, after inquiry, awarded compensation in the sum of ₹17,76,755/- with interest in favour of the claimant directing the insurance company to

pay in terms of the indemnity clause under the insurance policy. The tribunal further added ₹50,000/- as fee to the counsel for the petitioner.

2. The tribunal calculated the compensation payable in the case at hand thus:

Pecuniary damages (Special damages):

Loss of income	*Rs. 24,114/-*
Loss of earning capacity	*Rs. 8,68,104/-*
Medical expenses	*Rs. 2,52,182/-*
Special diet	*Rs. 40,000/-*
Conveyance charges	*Rs. 42,355/-*
Attendant charges	*Rs. 50,000/-*
Future medical expenses	*Rs.2,00,000/-*

Non-pecuniarv damages (General damages):

Pain, sufferings & trauma	*Rs. 1,50,000/-*
Loss of amenities, enjoyment of life, etc.	*Rs, 1,50,000/-*
Total	***Rs. 17,76,755/-***

3. The insurance company is aggrieved with the compensation calculated for loss of earning capacity in the sum of ₹8,68,104/- and the awards under the heads of attendant charges and future medical expenses submitting that there is no basis for the same. It questions the direction with regard to payment of counsel fee as well.

4. It is noted that the claimant had suffered permanent disability assessed by a medical board vide certificate dated 05.04.2008 (Ex.PW3/A) to be to the extent of 80% in relation to brachial plexus injury in the right upper limb. The tribunal after carefully examining the issue assessed functional disability to be to the extent of forty percent (40%) affecting the future

income and on the basis of age of the claimant at the relevant point of time (36 years) calculated the loss of future income at ₹8,68,104/- due to disability, taking ₹12,057/- as the salary.

5. The grievances of the insurance company is with regard to the adoption of the multiplier of 15. It points out that the claimant was working as dresser in Dr. Baba Saheb Ambedkar Hospital, Sector-6, Rohini, Delhi, at the time of accident and that there has been no loss of employment. In these circumstances, the learned counsel for the claimant fairly conceded that the loss of future income deserves to be calculated on the basis of multiplier of 9, in view of the fact that future earnings would be effected only after the claimant superannuates from government service at the age of 60.

6. In above view, the loss of future income should have been calculated at (12,057x40÷100x12x9) ₹5,20,862/-.

7. The awards of ₹50,000/- and ₹2,00,000/- on account of attendant charges and future medical expenses have been made without any proof of such expenditure having been recommended. Having regard to the nature of injuries suffered and their effect on the upper left limb, there is no justification for any attendant charges while ₹25,000/- should suffice towards the need for future medical expenses.

8. In above view, upon adding other heads of damages awarded by the tribunal, the total compensation comes to (5,20,862+24,114+2,52,182+40,000+42,355+25,000+1,50,000+1,50,000) ₹12,04,513/-, rounded off to ₹12,05,000/-.

9. The compensation is reduced accordingly. It shall carry interest at the rate levied by the tribunal. There is no justification for the direction with regard to counsel fee. The said part of the order of the tribunal is set aside.

10. The insurance company had been directed by order dated 24.09.2012 to deposit the awarded compensation with up-to-date interest with UCO Bank, Delhi High Court branch, New Delhi, within the period specified. The amount was allowed to be released to the claimant by order dated 29.11.2013. Since the compensation has been reduced, the claimant will be duty bound to refund the excess amount received by him. The learned counsel assures that the needful compliance would be done within 30 days, failing which the insurance company will be entitled to take out appropriate execution proceedings before the tribunal.

11. The statutory deposit, if made shall be refunded.

12. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 14, 2016
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