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

Date of Decision: 04.05.2016

+ **MAC.APP. 495/2007**

NEW INDIA ASSURANCE CO. LTD. Appellant
Through: Mr. Pankaj Seth, Advocate

versus

SURENDER SINGH AND ORS. Respondents
Through: None

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The first respondent, employed as a driver in Delhi Police, was riding on the pillion of a two wheeler scooter bearing no.DL-3S-AA-7274 (scooter), driven by one Surender (PW-2) on 23.06.2003, when it was involved in a collision with a car bearing no.DL-9CB-4963 (car) in the area of Narela, Bawana Road, resulting in he suffering injuries. He filed an accident claim case for compensation under Sections 166 and 140 of Motor Vehicles Act, 1988 (M.V. Act) which was registered as petition no.216/2006 on 23.03.2005, impleading the second and third respondents, they being the driver and owner respectively of the car, in addition to the appellant, New India Assurance Co. Ltd. (insurer), it admittedly having issued an insurance policy against third party risk for the period in question, as respondents. The

Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 06.11.2006, upheld the case of the claimant about accident having occurred, resulting in injuries due to negligent driving of the car by the second respondent. The tribunal assessed compensation in the sum of Rs.1,88,881/- and directed the appellant to pay with interest at the rate of 9% p.a. from the date of filing of the petition till realization. The said amount includes Rs.1,28,881/- towards medical expenses, Rs.25,000/- towards pain and suffering, Rs.5,000/- towards special diet and conveyance and Rs.30,000/- as compensation for the leave of absence availed from the office for about six months.

2. The present appeal was filed by the insurance company to challenge the finding of negligent driving of the car being the cause of the accident, also raising issues about the computation of compensation.

3. The appeal was admitted by order dated 03.03.2009. When it is taken up for hearing no one appears for either side. This was the state of affairs even on the last date of hearing. There is no good reason to defer the hearing of this old appeal yet again.

4. The record has been perused. It is found that the appeal is unmerited and liable to be dismissed.

5. In the course of the judgment, while discussing the evidence adduced by the claimant mainly through his own statement (as PW-1) and that of the scooter driver (PW-2), the tribunal made a stray reference to the provision contained in Section 163-A of the M.V.A Act to observe that there would be no effect to the case even if the fact of rash or negligent driving was not

proved. The reference to Section 163-A of the M.V. Act by the tribunal in the impugned judgment was wholly unnecessary. The claimant had examined himself and the scooter driver to prove the necessary facts. The evidence of both the said witnesses brings out the sequence of events leading to the conclusions from which inference of negligent driving of the car can be properly inferred. Noticeably, the car driver did not offer own evidence. In these circumstances, the finding about negligent driving of the car should have been clearly recorded. It must be so held now.

6. Coming to the question of compensation, exception has been taken in appeal to the proof of medical expenditure. It does appear that photocopies of receipts for procurement of medicines and diagnostic procedures were placed on record but then no objection was taken to the mode of proof during inquiry. The evidence shows that the claimant had suffered fracture in the leg which necessitated surgical procedure to be undergone twice, once to plant a steel rod, which not having worked to the satisfaction of the medical doctor, was replaced by a steel plate. In these circumstances, the expenditure incurred may have been much more than what has been granted.

7. Similarly, the award under the head of loss of pay on account of leave of absence from office for six months granted lumpsum cannot be grudging. The claimant does not appear to have come with a clear record in such context. Be that as it may, in the over all facts and circumstances, the compensation awarded by the tribunal cannot be described as inflated or unjustly high.

8. Thus, no interference is called for. The appeal is dismissed.

9. The compensation deposited by the insurance company shall now be released to the claimant.

10. The statutory amount, if deposited, shall be refunded only upon satisfaction that the award has been complied with.

R.K. GAUBA
(JUDGE)

MAY 04, 2016
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