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

Date of Decision: 29th April, 2016

\+ **MAC.APP. 773/2013**

THE ORIENTAL INSURANCE CO LTD ..... Appellant
Through: Mr. Ravi Sabharwal, Adv.

versus

MALKHAN @ LOKESH @ YOGESH & 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, aged 23 years, working for gain as a tailor in a private service suffered injuries in a motor vehicular accident that occurred on 01.05.2007 involving bus bearing No.DL 1 PB 1916 (offending vehicle) admittedly insured against third party risk with the appellant insurance company (insurer). The tribunal decided the accident claim case (no.853/08) instituted on 07.08.2008 by the claimant by judgment dated 29.04.2013 upholding his case that the accident had occurred due to negligent driving of the offending vehicle, fastening the liability on the insurer to pay compensation in the sum of ₹4,02,000/- with interest, the said amount inclusive of loss of income to the tune of ₹66,000/-, besides non-pecuniary damages under the heads of pain & suffering in the sum of ₹1

lakh and loss of amenities of life and loss of vital organ in the sum of ₹1,50,000/-.

2. The insurer questions the award submitting that the loss of income computed for a period of 18 months was without basis and non-pecuniary damages are unduly high.

3. The contentions of the insurance company in this case only need to be noted to be rejected. The impugned judgment and the tribunal's record shows that the spleen of the claimant was ruptured and he suffered the loss of the said organ. The tribunal has taken an appropriate view, for reasons properly set out, to assess the period of 18 months for which the claimant would have remained away from gainful work. In these circumstances, the awards under the non-pecuniary heads of damages also cannot be grudged.

4. The appeal is thus unmerited and, therefore, dismissed.

5. By order dated 30.08.2013 the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General within the period specified and upon such deposit being made, 80% was allowed to be released, the balance kept in fixed deposit receipt. The Registrar General shall now release the balance to the claimant in terms of the impugned judgment.

6. The statutory amount, if deposited, shall be refunded.

R.K. GAUBA
(JUDGE)

APRIL 29, 2016
VLD