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

% **<u>Date of Decision: 06th December, 2016</u>**

\+ MAC.APP.723/2012

NEW INDIA ASSURANCE CO LTD ..... Appellant
Through: Mr. P. Acharya proxy for Mr. Sameer Nandwani, Advocate

versus

PARVEEN KUMAR AND ORS ..... Respondents
Through: Mr. Gaurav Gupta, Advocate for respondent No.1

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

<u>JUDGMENT (ORAL)</u>

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of Rs.9,93,147/- has been awarded to respondent No.1.

2. On 07th August, 2006, respondent No.1 was travelling in bus No.DL-1P-B-4387 as a helper and he fell down from the bus while alighting and suffered grievous injuries. Respondent No.1 was admitted in the Trauma Centre of Lok Nayak Hospital where he remained hospitalised upto 20th August, 2006. He again admitted in Tirath Ram Shah Charitable Hospital from 24th to 29th August, 2006 and 16th to 22nd September, 2006. The toe of the left foot of respondent No.1 was amputated which resulted in 51% disability relating to left lower limb.

3. The Claims Tribunal awarded Rs.75,000/- towards pain and sufferings, Rs.1 lakh towards loss of amenities and enjoyment of life and Rs.1,50,000/- towards loss of marriage prospects. The Claims Tribunal awarded Rs.51,000/- towards medical expenses, Rs.19,872/- towards loss of income, Rs.5,47,275/- towards loss of future income, Rs.10,000/- towards special diet, Rs.15,000/- towards conveyance and Rs.25,000/- towards medical treatment. The total compensation awarded is Rs.9,93,147/-.

4. Learned counsel for the appellant urged at the time of hearing that respondent No.1 was negligent and, therefore, not entitled to any compensation. It is further submitted that the compensation awarded by the Claims Tribunal is on a higher side. It is submitted that the Claims Tribunal has taken the loss of functional disability as 51% which should be taken as 25%. It is further submitted that the future prospects should not be taken into consideration for computing loss of earning capacity. It is further submitted that compensation of Rs.25,000/- has been awarded for future treatment without any evidence. It is submitted that the Claims Tribunal has awarded counsel's fee of Rs.30,000/- without any justification.

5. Respondent No.1 is present in Court and his injuries have been seen. This Court is satisfied that the compensation awarded to respondent No.1 is just, fair and reasonable and does not warrant any interference. However, the counsel's fee awarded by the Claims Tribunal is set aside.

6. The appeal is partially allowed to the extent of setting aside of counsel's fee.

7. The appellant has deposited the entire award amount with UCO Bank, Delhi High Court Branch out of which Rs.5,07,297/- has been released to respondent and the balance amount is lying in fixed deposit.

8. Learned counsel for respondent No.1 submits that the appellant has deposited Rs.12,28,670/- with UCO Bank, Delhi High Court Branch on 06th September, 2016.

9. UCO Bank, Delhi High Court Branch is directed to keep Rs.11 lakh in 10 FDRs of Rs.1,10,000/- each in the name of respondent No.1 for the periods 1 year, 2 years, 3 years, 4 years, 5 years, 6 years, 7 years, 8 years, 9 years and 10 years. The balance amount, after keeping Rs.11 lakh in FDRs, be released to respondent No.1 by transferring the same to his savings bank account bearing No.09622191035336 with Oriental Bank of Commerce, Delhi-Bawana Branch, 29, Auchandi Road, Bawana, Delhi (IFSC Code ORBC0100962).

10. The monthly interest on the FDRs of respondents shall be credited in his individual savings bank accounts.

11. At the time of maturity, the fixed deposit amount shall be credited in the savings bank account of the beneficiary/respondent.

12. All the original FDRs shall be retained by UCO Bank, Delhi High Court Branch. However, the photocopies of the same shall be provided to the claimant/respondent.

13. No cheque book or debit card be issued to the claimant/respondent without permission of this Court.

14. No loan or advance or pre-mature discharge shall be permitted

without the permission of this Court.

15. The claimant/respondent shall approach the UCO Bank for completing the formalities for the disbursement of the award amount in terms of this order.

16. The statutory amount be refunded back to the appellant.

17. Copy of this judgment be given *dasti* to both the parties.

DECEMBER 06, 2016 **J.R. MIDHA, J.**

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