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

Date of Decision: 19.05.2016

\+ MAC.APP. 651/2014 and CM No.11680/2014

SHRIRAM GENERAL INSURANCE CO LTD ..... Appellant

Through: Mr. P. Acharya, Advocate

versus

SANJAY SINGH & ORS ..... Respondents

Through

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The first respondent (claimant), having suffered injuries in a motor vehicular accident on 28.06.2012, statedly on account of negligent driving of a truck bearing registration no.HR-38N-6893 (offending vehicle) instituted an accident claim case (no.83/14/13) on 06.12.2012, seeking compensation under Sections 166 and 140 of the Motor Vehicles Act, 1988 (M.V. Act) . The appellant insurance company (insurer) was impleaded as a party in addition to the driver and owner of the offending vehicle. It is admitted by the insurer that the offending vehicle was covered by third party risk insurance policy issued for the period in question.

2. The tribunal having upheld the case of the appellant about injuries suffered due to negligent driving of the offending vehicle awarded compensation in the sum of Rs.9,85,703/- with interest at the rate of 9% p.a. in favour of the claimant by judgment dated 28.04.2014 directing the insurer to pay.

3. The insurer is in appeal taking exception to the inclusion in the award of an amount of Rs.8,00,700/- towards loss of future income on the basis of findings that the claimant had suffered functional disability to the tune of 20% and that at the time of the cause of action arising he was in private service in receipt of Rs.19,626/- as salary. The contentions of the insurer are that the salary was not proved, and the disability having been certified to the extent of 13% was erroneously treated as functional disability to the extent of 20%.

3. Having heard the counsel for the insurer and having gone through the record both grounds are found to be unmerited. The claimant appeared in evidence as his own witness (PW-1). During his testimony, he affirmed on oath the fact of his employment in private service as an engineer with emoluments of Rs.19,626/- p.m. and submitted his salary certificate in support. Noticeably, the witness was cross-examined at length by the insurer but the testimony about the employment and earnings was not even remotely challenged. The claimant has proved on record the disability certificate (Ex. PW1/7) which indicates physical impairment in the left upper limb to the extent of 13%. The tribunal took note of the fact that he is an engineer by profession. The impairment of the upper limb is undoubtedly bound to affect his capability and competence to carry out the duties

expected of an engineer. In these circumstances, the view taken by the tribunal in assessing the functional disability to the extent of 20% does not call for any interference.

5. By order dated 23.07.2014, the insurance company had been directed to deposit the entire awarded amount with interest with the Registrar General whereupon the execution was stayed though an amount of Rs.6 Lakh from out of said deposit was allowed to be released. The Registrar General shall now release the balance to the claimant in terms of the impugned judgment.

6. The statutory deposits, if made, shall be refunded.

7. The appeal and the pending application are dismissed.

(R.K. GAUBA)
JUDGE

May 19, 2016
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