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

Date of Decision: 11th March, 2016

+ **MAC.APP. 863/2012**

NEW INDIA ASSURANCE CO LTD Appellant

Through: Ms. Neerja Sachdeva, Adv.

versus

JITENDER KUMAR & ORS Respondents

Through: Mr. S. K. Pandey, Adv. for R-1.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The first respondent (the claimant) had suffered grievous injuries (fracture of Tibbia and Fibula bones of the left leg) in a motor vehicular accident that occurred at 01:25 PM on 18.06.2009 when the motorcycle bearing registration no.DL-7SV-5009 (the motorcycle) driven by him was statedly hit by a JCB crane bearing registration no.HR-63A-7889 (the offending vehicle) driven in a negligent manner by the second respondent. The offending vehicle, owned by the third respondent, was admittedly insured against third party risk with the appellant/insurance company (the insurer). On a claim petition under Sections 166 & 140 of the Motor Vehicles Act, 1988 (the MV Act) brought by the claimant before the motor

accident claims tribunal (the tribunal), where it was registered as MACT no.104/10/2009, the matter was inquired into and on that basis an award of ₹2,30,000/- with interest at the rate of nine percent (9%) per annum from the date of filing of the petition (14.10.2009) till payment was granted in addition to ₹25,000/- towards lawyers charges.

2. The tribunal computed the damages as under:-

“Pecuniary damages (Special damages):

- a) Medical expenses- Rs. 1,10,000/-
- b) Special diet expenses- Rs. 10,000/-
- c) Conveyance charges- Rs. 10,000/-

Non-pecuniary damages (General damages)

- d) Pain, suffering, mental shock
and trauma - Rs.1,00,000/-

Total Rs.2,30,000/- ”

3. The insurance company which has been burdened with the liability to pay, has questioned the award mainly on the grounds that the medical expenses having been reimbursed, there was no occasion for the said amount to be again directed to be included in the compensation and further that the award on account of pain, suffering, mental shock and trauma in the sum of ₹1,00,000/- is on the higher side. The insurance company also submits that the evidence showed that there was negligence on the part of the claimant himself as, during the cross-examination, he had admitted that the JCB machine was stationary on the side of the road. The insurance company is further aggrieved on account of direction for payment of lawyer's charges.

4. During the course of hearing, learned counsel for the appellant/insurance company submitted that there is an admission that the claimant while driving the motorcycle had hit the JCB machine, which was stationary on the left side of the road, from behind. On being called upon to show from record as to on what basis it is being submitted that the motorcycle had hit the other vehicle “from behind”, the counsel shifted stand and stated that she only wanted to say that the JCB machine was stationary on the left side. But, on being reminded that aside from the said submission, she had also argued that the motorcycle had hit the JCB machine “from behind”, she regretted having made such argument. Such irresponsible and factually incorrect submissions cannot be countenanced.

5. At the hearing, the learned counsel for the claimant argued that the accident had occurred when both the vehicles were moving in as much as respondents (driver and owner) in their joint written statement had stated that the collision occurred when the motorcycle had tried to overtake the JCB machine (offending vehicle). He submitted that he concedes that there was no occasion for lawyer’s charges to be granted and further that non-pecuniary damages on account of pain & suffering *etc.* are indeed on the higher side. On the medical expenses, he submitted that the tribunal had gone through the evidence and awarded the compensation in the sum of ₹1,10,000/- found incurred towards medical expenses on the basis of the documents duly proved.

6. Having heard both sides, this court finds no substance in the submission of the insurance company about negligence on the part of the claimant. The driver and owner of the offending vehicle have admitted in

their pleadings that both the vehicles were in motion. The claimant has proved through his evidence that the negligence was on the part of the driver of the offending vehicle. The finding of the tribunal on this subject affirming the case of the claimant does not call for interference only on the stray sentence occurring in the cross-examination that JCB machine was “standing” on the side of the road. It was not clarified by any further enquiry as to whether JCB machine was stationary at the time of the collision or before the motorcycle had approached the place of occurrence.

7. Indeed, during his cross-examination, the claimant had conceded that the medical expenses incurred by him for treatment were taken care of by his employer. Thus, he did not spend any amount of money on medical treatment. Therefore, the award of ₹1,10,000/- on that account is not justified. In the given facts and circumstances, where the injuries had not resulted in any disability, general damages in the sum of ₹1,00,000/- are found to be on the higher side. The amount is reduced to ₹50,000/-. Thus, total compensation payable in the case is worked out at ₹70,000/-. It is reduced accordingly.

8. The direction with regard to the lawyer’s charges was uncalled for and, therefore, set aside.

9. By order dated 08.08.2012, the insurance company had been directed to deposit 75% of the awarded amount with UCO Bank, Delhi High Court branch. It was directed to be held in FDR for a period of six months to be renewed periodically. The Registrar General shall now calculate the amount payable as per award modified above and release the same to the claimant

forthwith, refunding the excess with statutory deposit, if made, to the insurance company.

10. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 11, 2016
ssc

