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

Date of Decision: 24th February, 2016

\+ **MAC.APP. 933/2012**

NATIONAL INSURANCE CO LTD ..... Appellant
Through Mr. A K Soni, Adv.

versus

VIKRANT @ VICKY & ORS ..... Respondent
Through Mr. Devendra Kumar, Adv. for R-1

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The Motor Accident Claims Tribunal (the Tribunal) by judgment dated 10.05.2012 passed in MACT case No.180/10/2008, registered on the petition under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act), awarded compensation in the sum of Rs.3,26,000/- in favour of the first respondent herein, calculating it as under:-

Pecuniary damages (Special damages):
1). Medical expenses=================Rs.12,000/-
2). Loss of income================== Rs.84,000/-
3). Special diet==================== Rs.25,000/-
4). Conveyance==================== Rs 25,000/-
5). Attendant charges ================ Rs.30,000/-

Non-pecuniary damages (General damages):
6). Pain and sufferings, shock, etc.=======Rs.1,50,000/-

Total Rs.3,26,000/-

2. As per the directions of the Tribunal, the awarded compensation is payable with interest at 9% per annum from the date of filing petition till realization by the insurance company, it concededly being the insurer of RTV bearing No.DL 1V 7658 (the offending vehicle) against third party risk. The insurance company has contended that the award of damages is unduly high on all counts inasmuch as the injuries were not proved to be serious nor have resulted in any permanent disability. The insurance company also questions the direction for Rs.25,000/- to be paid as counsel fee.

3. *Per contra*, the learned counsel for the claimant, while conceding that the direction about counsel fee may be set aside, argued that having regard to the severe internal abdominal injuries suffered by the claimant, it having led to bowel perforation, the award is just and proper and there is no reason for interference.

4. Having heard both sides, this court finds that contentions of the insurance company with regard to quantum of compensation deserve to be rejected by referring only to the following summary of unrebutted evidence led by the claimant in the impugned judgment :

> *"Sh. Madan Mohan, Statistical Asstt., BSA Hospital, Delhi has been examined as PW-6, who has proved the copy of MLC bearing no.6431/07 dated 15.12.2007 of petitioner Vicky as already Ex.PW4/1. He corroborated the story as stated by the petitioner PW-1 regarding his admission and discharge from the said hospital. He proved the entire original medical treatment record as collectively Ex.PW6/A (four files). He further stated that the treatment was given free of cost in the hospital.*
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> *Lastly the petitioner further examined Dr. Ashutosh Singh, Sr.Resident (Surgery), BSA Hospital, Rohini, Delhi as PW-7. He stated that the petitioner was firstly admitted in the hospital on 15.12.2007 and the operation done was emergency*

exploratory laprotomy with haemicolectmoy with llio-transverse Colostomy. The patient was again admitted on 15.01.2008 and at that time abscess from around colostomy. The patient was again admitted on 17.07.2008 for the closure of Colostomy, but the operation postponed due to medical disorders (blood disorders). He was again admitted on 15.11.2008 for final Colostomy closure. This is a case where the colon/intestine removed and for natural calls alternative passage created. After that the passage for natural call closed in the last admission. The weakness of abdomen wall will remain forever and the operation scars will be visible as it is till it is removed by plastic surgery. In future there may be a chance of Harnia. Nothing incriminating has come out in the cross examination of PW-7."

5. Indeed, the injuries were quite serious and resulted in prolonged and recurring treatment and surgical procedures. In such cases, it is not always possible for the party affected to scrupulously maintain all receipts of medical expenses incurred. Since the medical expenses had to be reasonably assessed, the Tribunal made the appropriate award on that subject over and above the medical receipts which were proved. The calculation of compensation under the pecuniary and non-pecuniary damages awarded by the Tribunal is found just and proper.

6. In view of the above, the direction about counsel's fee and expenses is set aside. The compensation awarded by the Tribunal with interest as levied are maintained.

7. By order dated 27.08.2012, the insurance company had been directed to deposit 50% of the awarded amount (excluding counsel's fee and out of pocket expenses) with up-to-date interest, which was directed to kept in fixed deposit receipt in UCO Bank, Delhi High Court Branch, New Delhi for a period of six months. By order dated 18.12.2013, the said deposited amount

with up-to-date accrued interest was ordered to be released to the claimant. The insurance company was later directed by order dated 06.07.2015 to deposit the balance 50% with up-to-date interest with the Registrar General of this Court within a period of four weeks and for the same to be kept in interest bearing deposit for a period of one year with UCO Bank, Delhi High Court Branch, New Delhi. The learned counsel for the insurance company submits the last said order was not complied with.

8. The insurance company is now directed to deposit the entire balance amount payable in terms of the impugned award with the Tribunal within 30 days of today whereupon it shall be released to the claimant in terms of the order modified.

9. Statutory deposit, if made, shall be refunded.

10. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

FEBRUARY 24, 2016/VLD