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

Date of Decision: 12th February, 2016

\+ MAC.APP. 296/2015 & CM No.5705/2015

ORIENTAL INSURANCE CO. LTD ..... Appellant

Through: Mr.A.K. Soni, Adv.

versus

UPENDER YADAV & 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 Insurance Company is in appeal questioning the award by the Tribunal by judgment dated 11.02.2015 on the claim petition under Sections 166 and 140 of the Motor Vehicles Act, 1988 (MV Act) registered as MACT case No.439/2010 granting compensation in the sum of ₹5,99,736/- in favour of the claimant/the first respondent herein, for the injuries suffered by him in the motor vehicular accident that occurred on 15.03.2009. It is stated that the injuries suffered included those on the face and, thus, there has been defacement which requires plastic surgery. The main portion of the compensation awarded is the sum of ₹4,74,000/- which primarily is based on the estimated expenditure required to be incurred towards plastic surgery.

2. The contention of the Insurance Company is that the estimates were not properly proved that the witness (PW2) examined was unable to confirm the correctness of the medical bills and thus, there was no opportunity for the Insurance Company also to test the same by effective cross-examination or by adducing evidence in rebuttal. The learned counsel for the claimant fairly agrees that proper evidence was not adduced during the inquiry. He requests that the appeal may be allowed and the matter be remanded back to the Tribunal for further inquiry.

3. The appeal is allowed. The claim case is remitted for further inquiry to the Tribunal which shall grant fresh opportunity to the claimant to adduce evidence with regard to the medical expenditure already incurred, or required to be further incurred, with the right to the opposite parties, including the insurance company, to adduce evidence in rebuttal.

4. The parties are directed to appear before the Tribunal on 14th April, 2016.

5. Trial Court's record be returned.

6. Vide order dated 26.03.2015, the Insurance Company had been directed to deposit the entire awarded amount with proportionate interest with UCO Bank, Delhi High Court Branch out of which, ₹99,736/- was allowed to be released to the claimant.

7. The Registrar General shall take steps to transfer the balance amount lying with the UCO Bank, Delhi High Court Branch, New Delhi to the Tribunal which shall retain the same in the name of the Insurance Company in an interest bearing fixed deposit receipt in a nationalised

Bank to be disbursed in terms of the judgment to be passed finally on the claim petition. The amount already released shall be suitably adjusted at the appropriate stage.

8. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

FEBRUARY 12, 2016
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