$~5 & 6

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

Date of Decision: 8th April, 2016

\+ **MAC.APP. 923/2011**

NEW INDIA INSURANCE CO. LTD.

..... Appellant

Through: Mr. Sameer Nandwani, Adv.

versus

MAHINDER KUMAR GUPTA AND ORS. ..... Respondent

Through: Mr. Amit Kumar Pandey, Adv.

\+ **MAC.APP. 581/2012**

MAHINDER KUMAR GUPTA AND ORS. ..... Appellant

Through: Mr. Amit Kumar Pandey, Adv.

versus

NEW INDIA INSURANCE CO. LTD ..... Respondent

Through: Mr. Sameer Nandwani, Adv.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Mahender Kumar Gupta, then 59 years old, working as cashier in post office Krishna Nagar Head Office, Delhi suffered injuries in a motor vehicular accident that occurred on 19.01.2004 at about 9 PM when the two wheeler motorcycle described as Hero Puch bearing registration No.DL 5SJ

8485 (two wheeler vehicle) he was driving came to be involved in a collision with another motor vehicle described as Tata 407 bearing registration no. UP 12B 6786 (offending vehicle). During the inquiry on the claim petition (32/2009) brought by him under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act), it was proved before the motor accident claims tribunal (tribunal) that the collision took place due to rash driving of the offending vehicle by Upender Prashad (the second respondent in MAC.APP.No.923/2011), it being concededly insured against third party risk with New India Assurance Co. Ltd. (appellant in MAC.APP.923/2011), on the insurance policy taken out by its registered owner Noor Hasan (third respondent in MAC.APP.No.923/2011) for the period in question.

2. The tribunal found on the basis of evidence led that Mahender Kumar Gupta (claimant) had suffered disability which was certified (Ex.PWA1/A) to be 50% permanent in nature in relation to the whole body. It was also found that the gross income from the government employment at the time of the accident, per salary certificate (Ex.PW2/A), was Rs.14,782/- per month. The accident having occurred on 19.01.2004, the claimant attained the age of superannuation from government service and, thus, retired on 30.06.2004. The tribunal concluded that on account of retirement from government service, the claimant would have still been earning Rs.7,000/- per month and, taking into account the extent disability (50%), concluded that the loss of income in future would be Rs.3,500/- per month. Applying the multiplier of 8, the loss of future income

(Rs.3,36,000/-) was computed, the total compensation awarded in the case being calculated thus:

Expenditure on treatment	: Rs. 4,76,000/-
Pain and Sufferings	: Rs. 50,000/-
Special diet	: Rs. 20,000/-
Conveyance	: Rs. 20,000
Future Loss of Income	: Rs. 3,36,000/-
Loss of future prospects & amenities of life	: Rs. 1,00,000/-
Total	: Rs. 10,02,000/-

3. The tribunal directed the insurance company to pay the above-said amount of money as compensation with interest at 7.5% per annum till realization.

4. The insurance company has come up in appeal (MAC.APP.No.923/2011) and at the hearing raised only one contention, viz., that the assessment of income after the injury at Rs.7,000/- per month was improper as upon the superannuation the claimant would still have continued receiving the same amount towards pension. *Per contra*, the claimant by his appeal (MAC.APP.No.581/2012) has argued that he has not been properly compensated inasmuch as the disability, though certified to the extent of 50% only, had rendered him totally dependent, incapable of being gainfully employed, Dr. Arun Yadav (PWA1), the Senior Orthopedic Surgeon, Hindu Rao Hospital who had examined him as member of the medical board which issued the disability certificate having opined that there are no chances of complete recovery. The counsel for the claimant also submitted that damages on account of expenditure required to be incurred to engage an attendant should also have been awarded.

5. Having heard both sides at length and having gone through the record, this Court finds no substance in the argument raised by the insurer in its appeal. There is no doubt that after superannuation from the government service, the claimant would have been granted pension which, under the normal rules, would ordinarily be 50% of the last emoluments drawn in active service. Superannuation from government service, at the stage of 60 years, however, cannot mean the end of working life. With life expectancy having gone up, a person in the said age-group ordinarily continues to be gainfully employed, taking up new jobs or assignments for a number of years. It can be presumed that the capacity to earn even after retirement from public service at the age of 60 years would be similar to what was the earlier earning capacity. Therefore, the assumption of the tribunal that the claimant would have continued to earn at least Rs.7,000/- per month, in addition to the amount receivable as pension, cannot be faulted.

6. At the same time, the submission of the claimant about the extent of functional disability cannot be accepted for the simple reason that there is no evidence furnished in support. The testimony of PWA1 revealed that the appellant suffers from right sided hemi-paresis which was explained as weakness of the right side of the body. Undoubtedly, the medical opinion is that there are no chances of complete recovery which is why the disability was certified to be partially permanent and of the extent of 50% in relation to whole body. From this, however, it cannot be inferred that the claimant has been rendered totally handicapped or ineligible of being gainfully engaged. No evidence having been led about any expenditure on

account of attendant charges, no case is made out for any additional award towards that end.

7. In view of the above, both appeals are found unmerited and are liable to be dismissed.

8. By order dated 18.10.2011, in MAC.APP.No.923/2011, the execution of the impugned award was stayed subject to the insurer depositing the awarded compensation with the Registrar General, who was directed to convert it into fixed deposit initially for a period of three months to be renewed from time to time. By order dated 15.02.2012, 50% of the said deposited amount was released to the claimant. The Registrar General is directed to release the balance to the claimant in terms of the impugned award.

9. Statutory deposit, if made, by the insurer shall be refunded.

10. The appeals are disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 08, 2016
VLD