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

Date of Decision: 22nd April, 2016

\+ **MAC.APP. 319/2015 & CM Nos.6195/2015 & 9058/2016**

RELIANCE GENERAL INSURANCE CO LTD ..... Appellant
Through: Ms. Shantha Devi Raman, Adv.

versus

NARESH KUMAR & ORS ..... Respondent
Through: Mr. Navneet Goyal, Adv. for R-1

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By judgment dated 05.01.2015, the motor accident claims tribunal (tribunal) awarded compensation in the sum of ₹46,01,125/- with interest at 7.5% per annum in favour of the respondent (the claimant) on account of injuries suffered by him in motor vehicular accident that occurred on 19.09.2009 involving negligent driving of motor vehicle tempo TATA-407 bearing registration No.DL 1LG 7877 (the offending vehicle), admittedly insured against third party risk with the appellant insurance company (insurer) for the period in question. The appellant (insurer) having admitted liability to indemnify was burdened with the liability to satisfy the award and has come up with the appeal at hand taking exception to the income of

the claimant having been accepted at ₹6,500/- per month on the basis of document (Ex.PW1/C), purportedly a salary certificate produced by the claimant himself in the course of his testimony. The insurance company also raises the issue of interest being awarded on the non-pecuniary heads of damages. During the course of arguments, question arose as to whether the proof of income from the private employment, as pleaded by the claimant, by mere production of document (Ex.PW1/C) could have been accepted. The learned counsel for the claimant fairly conceded that the representative of the employer company should have been called as a witness to prove the said employment and while agreeing to the objection of the insurance company, to this effect, he also submitted that the claimant has been suffering complications and continues to be undergoing further treatment which has resulted in additional medical expenditure having been incurred for which he seeks liberty to adduce further evidence.

2. In above facts and circumstances, both the insurer and the claimant fairly agree with the issue of computation of compensation be remitted to the tribunal for further inquiry wherein both sides may be granted liberty to produce additional evidence.

3. By order dated 20.04.2015, while issuing notice on the appeal, and considering the request for stay, it was noted, on the submissions made by the insurer, that the amount of compensation awarded had already been recovered by the tribunal through attachment. By the said order, ₹20 lakhs was allowed to be released to the claimant from out of the amount realized by the tribunal, the balance directed to be retained in fixed deposit for a

period of one year to be renewed from time to time during the pendency of the appeal.

4. The joint request is allowed. The impugned judgment insofar as it determined the amount of compensation payable and the terms thereof is set aside. The matter to that extent is remitted to the tribunal for further inquiry and fresh adjudication, *inter alia*, by allowing both the parties to lead further evidence in accordance with law. The amount already released to the claimant shall be liable to be adjusted against the award that is eventually passed at the conclusion of the proceedings to be now further held. The balance amount out of the amount realized by attachment presently held in fixed deposit receipt with UCO Bank, Delhi High Court branch, New Delhi shall be transferred by the Registrar General to the tribunal for being availed of to satisfy the award as is now expected to be passed. Needless to add, if the amount lying in deposit is in excess of what is held to be given in compensation, after adjusting the amount already paid, the same shall be refunded and conversely if it is found to be deficient, the insurance company shall be duty bound to pay the balance. The parties are directed to appear before the tribunal on 23.05.2016.

5. Given the nature of the injuries suffered and their after-effect, it is desirable that the inquiry hereby remitted is concluded expeditiously. The tribunal shall make all endeavours to do so and the parties shall be duty bound to render full cooperation. Preferably, the tribunal must conclude and pass the fresh judgment within six months of the date hereby fixed for first appearance.

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

7. Tribunal's record shall be returned.

8. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 22, 2016
VLD