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

Date of Decision: 4th March, 2016

+ **MAC.APP. 771/2010**

ICICI LOMBARD GENERAL INSURANCE CO LTD

..... Appellant

Through Ms. Suman Bagga and Mr. Pankaj
Gupta, Advs.

versus

VISHWA NATH & ORS

..... Respondent

Through Mr. Ashok Popli, Adv. for R-1

CORAM:

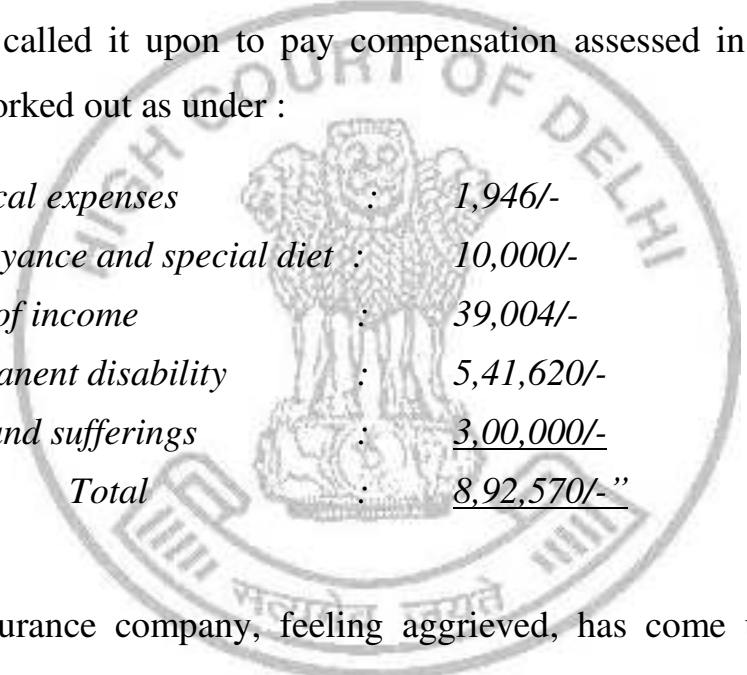
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The first respondent (the claimant), then aged 37 years, serving as a constable in Delhi Police met with an accident on 13.01.2006 at about 8.45 PM whilst he was on duty at check post of Pocket No.1, Vivek Vihar when he was hit by motorcycle No.DL4S AY 5173 owned by the second respondent and driven by the third respondent, the vehicle being admittedly insured against third party risk with the appellant company (the insurer). He filed a claim petition under Sections 166 and 140 of Motor Vehicles Act (MV Act) on 05.07.2006 whereupon it was registered by the Motor Accident

Claims Tribunal as suit No.1408/2008. The claim case was inquired into. During the course of inquiry, the insurer took the plea that there was a breach of terms and conditions of the insurance policy as the driver did not hold a valid licence. The insurer led evidence by examining its area manager, legal (R2W1) to prove a notice that had been issued and served on the insured, the owner under Order 12 Rule 8 of Code of Civil Procedure, 1908 (CPC) calling upon him to show the driving licence to which there has been no response. The Tribunal rejected the contention of the insurance company and called it upon to pay compensation assessed in the sum of ₹8,92,570/- worked out as under :



1. Medical expenses	:	1,946/-
2 Conveyance and special diet	:	10,000/-
3. Loss of income	:	39,004/-
4. Permanent disability	:	5,41,620/-
5 Pain and sufferings	:	<u>3,00,000/-</u>
Total	:	<u>8,92,570/-"</u>

2. The insurance company, feeling aggrieved, has come up with the appeal at hand questioning the compensation payable under the head of permanent disability pointing out there was no loss of employment due to the disability suffered which has been assessed to the extent of 27% in relation to both the upper limbs as per disability certificate proved (Ex.PX1). It also argues that the award under the head of pain & suffering in the sum of ₹3 (three) lakhs is unduly high. It presses for recovery rights against the owner on the ground that the reasoning for rejecting its plea of breach of terms and conditions of the policy as set out by the Tribunal in the impugned

judgment was not proper since, there was no proof of holding a valid and effective driving licence with the driver.

3. Having heard arguments on both sides, this Court finds substance in the contention of the insurance company with regard to the assessment of compensation payable due to permanent disability which essentially is compensation for loss of income in future. It is admitted on the side of the claimant that he has continued to be in the service of Delhi Police, notwithstanding the disability suffered. There has, thus, been no loss of employment or earnings. It was argued on his behalf, however, that due to the disability the claimant has suffered on account of loss of possibility of upward progression of his career. But then, such factors are imponderables and consequently need to be factored in under non-pecuniary heads of damages.

4. In ordinary course, the claimant would continue to be in service of Delhi Police till he attains the age of 60 years. Thus, the loss of future income must be worked out with reference to the date on which he would stand superannuated. In these circumstances, the calculation would have to be made on the multiplier of 9.

5. The gross income as per the document (Ex.PW2/3) was ₹11,145/-. Thus, the loss of future income is calculated as $(11,145 \times 12 \times 9 \times 27 \div 100)$ ₹3,24,988/- rounded off to ₹3,25,000/-. Therefore, instead of the award of ₹5,41,620/- directed to be paid under the head of permanent disability by the Tribunal, an amount of ₹3,25,000/- will have to be added under the head of loss of future income due to disability.

6. The Tribunal awarded an amount of ₹3 lakhs under the head of pain & suffering. By itself, this may be unduly high. But then, it is noted that the Tribunal did not award any compensation under loss of amenities of life. Put together, the amount that needs to be awarded under the said two heads would still turn out to be ₹3 lakhs [*Master Mallikarjun v. Divisional Manager, The National Insurance Company Ltd.* (2014) 14 SCC 396]. With this clarification no further modification needs to be made to the compensation made therein.

7. The total compensation in the case at hand comes to ₹6,75,950/- rounded off to ₹6,76,000/-. Needless to add, it shall carry interest as levied by the Tribunal.

8. There is merit in the contention of the appellant regarding breach of terms and conditions of the policy. It is noted that the owner (insurer) of the offending vehicle did not appear before the Tribunal to contest. The same is the position even in appeal. The Tribunal had adduced evidence by examining R2W1 who proved the relevant facts with regard to the breach in that the driver of the offending vehicle was not shown to be in possession of a valid and effective driving license in spite of notice having been served on the owner/insured under Order 12 Rule 8 CPC. The Tribunal, however, declined to hold it as a breach of terms and conditions of the policy for the reason no notice had been served upon the driver by the insured. The privity of contract with regard to the insurance policy is between the insured and the owner. In these circumstances, the reason cited by the Tribunal cannot be upheld.

9. Thus, while calling upon the insurance company to pay the compensation to the claimant, it is granted recovery rights against the owner (the second respondent herein).

10. The insurer had deposited the entire award with up-to-date interest with the Registrar General in terms of direction in Order dated 19.11.2010. By order dated 31.01.2012, 50% of the said deposit was allowed to be released. But then, by order dated 31.07.2012, the earlier order was modified and only ₹2.5 lakhs was allowed to be released. The Registrar General shall now calculate the amount payable to the claimant in terms of the award modified as above and release the same to the claimant refunding the balance lying in deposit in excess of its liability to the insurance company with the statutory deposit, if made.

11. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 04, 2016
VLD