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

*Decided on: 19<sup>th</sup> July, 2017*

+ MAC.APP. 42/2017 and CM No.1468-1469/2017

NATIONAL INSURANCE CO LTD ..... Appellant

Through: Mr. S.P. Jain and Mr. Himanshu  
Gambhir, Advocates

versus

AJAY KUMAR & ORS ..... Respondents

Through: Mr. Manish Singhal, Adv.for R-1

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**JUDGMENT (ORAL)**

1. The first respondent was travelling in a truck bearing no.DL-1LG-4321, the second respondent being its driver, on 03.09.2008 when in the area of Village Khanpur Koliya, it ended up colliding against a truck stationary on the roadside in breakdown condition, the said other vehicle being HR-37A-8295. As a result of the collision, he suffered injuries which rendered him permanently disabled. The truck driven by the second respondent was statedly insured against third party risk with the appellant / insurance company (insurer) for the period in question.

2. The first respondent (hereafter claimant) instituted accident claim proceedings (suit no.4677/2016) on 19.08.2011 seeking compensation.

3. The Tribunal returned finding that the case for compensation on the principle of fault-liability was made out and awarded compensation in the sum of Rs.9,38,000/-. Noticeably, the said award includes Rs.6,30,000/- on account of loss of future earnings due to permanent disability.

4. It is the abovesaid component and the issue of negligence which are the bone of contention raised by the insurance company in the present appeal, it having been burdened with the liability to pay the awarded compensation with interest at the rate of 9% p.a.

5. The learned counsel for the insurer and the claimant have been heard and the tribunal's record has been perused.

6. While it may be correct that there was no first information report registered by the local police, the fact remains that the collision was duly noted vide daily diary (DD) no.19 of police station Aman Vihar. It may be that in the said DD entry, the police had taken it to be a case of accident that had occurred per chance (*ittefaqia*). But, the claimant relied on his own evidence appearing as PW-1. In the said evidence, he narrated the sequence of events. It is stated that a stray animal had come in the way of the truck and, in order to save it, the second respondent had turned the vehicle and in the process, lost control and the said vehicle ended up colliding the stationary vehicle on the roadside.

7. The principle of *re ipsa loquitur* squarely applies. The vehicle was moving on the road and having regard to the conditions of roads in India, the possibility of stray animals coming into the path of the motor vehicles had to be kept in mind by the driver. The fact that he tried to save an animal may be well justified. But then, such effort could and should not have ended up in he (the driver) losing control. The fact that he lost control and the vehicle in question collided against a stationary vehicle demonstrates the rash driving giving rise to the cause of action.

8. The injuries suffered by the claimant were in the lower limbs. The evidence led has proved that there were fractures of both bones of the left lower limb. This has resulted in physical disability which was assessed by the board of doctors of Sanjay Gandhi Memorial Hospital, Mangol Puri (vide Ex. PW12/2) to be to the extent of 74% and permanent in nature with no likelihood of improvement. Having regard to the fact that the claimant was earning his livelihood as a driver, loss of effective use of the left lower limb to such an extent indeed should result in the assessment as made by the tribunal, the effect being that the claimant now suffers from 74% functional disability. The conclusions reached by the tribunal in this regard, therefore, do not call for interference.

9. The tribunal, however, fell in error by accepting the claim that the claimant was earning Rs.5,000/- p.m. It picked up such wages on the assumption that they were less than minimum wages for unskilled worker. On the date of the accident, the minimum wages for a skilled worker were in the sum of Rs.4,107/-. In absence of any cogent

evidence about gainful employment at the wages stated by the claimant, the computation should have been made on the basis of minimum wages at Rs.4,107/- p.m.

10. The tribunal accepted the evidence about the claimant being 45 years old on the relevant date and, thus correctly applied the multiplier of 14. The calculation is made afresh. The loss of future earnings is computed as (Rs.4,107/- x 75 / 100 x 12 x 14) Rs.5,17,482/-. Adding the other components of damages awarded by the tribunal, the total compensation comes to (Rs.5,17,482/- + Rs.12,573/- + Rs.25,000/- + Rs.20,000/- + Rs.1,50,000/- + Rs.1,00,000/-) Rs.8,25,055/-, rounded off to Rs.8,26,000/-.

11. The award is modified accordingly. Needless to add, it shall carry interest as levied by the tribunal.

12. In terms of order dated 13.01.2017, the insurance company has deposited the awarded amount with interest with the tribunal. The tribunal shall release the amount due to the claimants in terms of modification ordered above refunding the excess to the insurance company.

13. It is made clear that this modification does not affect the recovery rights granted to the insurance company by the impugned judgment.

14. The statutory amount shall be refunded.

15. The appeal and the pending applications are disposed of in above terms.

**R.K.GAUBA, J.**

**JULY 19, 2017/yg**