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

Decided on : 12th July, 2017

\+ MAC.APP. 52/2016 and CM 2006/2016

BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LTD ..... Appellant

Through: Mr. Navneet Kumar, Advocate

versus

YOGENDER AWASTHI @ YOGENDER ..... Respondent

Through: Mr. V.K. Vashistha, Advocate

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

JUDGMENT (ORAL)

1. The first respondent had suffered injuries in a motor vehicular accident that took place on 11.11.2009. The appellant / insurance company is liable to indemnify because it had issued insurance policy covering third party risk for the period in question in respect of the offending vehicle, it being Honda City car bearing registration no.DL-3CBE- 0663.

2. By judgment dated 05.12.2015 passed on the accident claim case (suit no.1309/2009) of the first respondent, the Tribunal awarded compensation in the sum of Rs.3,81,500/-, it having been computed under several heads.

3. The insurance company takes exception to the award to Rs.2 Lakhs under the head of loss of enjoyment of life, its contention also

being that the award of Rs.1 Lakh on account of pain and suffering is excessive.

4. Having heard the learned counsel on both sides and having gone through the Tribunal's record, this court notes that the injuries suffered by the petitioner included grievous injury in the left ankle. Though, mercifully, the said injury is not shown to have resulted in any permanent disability, the claimant had to undergo surgical procedure for treatment which was spread over several months The evidence on record shows the surgical procedure required implant. It is inherent in this that there would be a need for a further surgical procedure for removal of the implant. In this view, future medical treatment expenses will also have to be factored in. The award on account of pain and suffering at Rs.1 Lakh in these circumstances is deficient rather than being excessive. Indeed, the award on account of loss of enjoyment of life cannot be justified but arrangement for future medical expenses need to be added.

5. For the foregoing reasons, the award on pain and suffering is increased to Rs.1,50,000/-. The award of Rs.2 Lakh towards loss of enjoyment of life is set aside. Instead, Rs.50,000/- is added towards future medical expenses. In the result, the compensation is reduced by Rs.1 Lakh. The total compensation now works out to (Rs.3,81,500/- (-) Rs.1,00,000/-) Rs.2,81,500/-, rounded off to Rs.2,82,000/-.

6. The award is modified accordingly. Needless to add, it shall carry interest at 9% p.a. as ordered by the Tribunal.

7. In terms of order dated 20.01.2016, the insurance company had deposited the entire awarded amount with interest with the Tribunal

and out of the said deposit 30% has already been released to the claimant. The Tribunal shall now release the balance in terms of the modified award refunding the excess to the insurance company with corresponding interest.

8. The statutory deposit shall also be refunded.

9. The appeal and the pending application are disposed of in above terms.

10. Dasti.

R.K.GAUBA, J.

JULY 12, 2017
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