$~R-166 & 167

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

Decided on: 6th September, 2017

\+ MAC APPEAL No. 69/2010

INAAM SINGH ..... Appellant
Through: Mr. S.N. Parashar, Adv.

versus

UPSRTC & ORS. ..... Respondents
Through: Mr. R.B. Shami, Adv. for R-2.

\+ MAC APPEAL No. 114/2010

ORIENTAL INS. CO. LTD. ..... Appellant
Through: Mr. R.B. Shami, Adv.

versus

INAAM SINGH & ORS. ..... Respondents
Through: Mr. S.N. Parashar, Adv.

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

JUDGMENT (ORAL)

1. Inaam Singh, appellant in MAC Appeal No. 69/2010, suffered injuries in motor vehicular accident that occurred on 18.11.2004 due to negligent driving of bus bearing registration no. UP 81H 9644, admittedly insured against third party risk with Oriental Insurance Company Ltd. (appellant in MAC appeal No. 114/2010). He instituted accident claim case (suit no. 308/2005) on 15.07.2005

seeking compensation for the injuries suffered by him which included fractured ribs, he having been assessed to be permanently disabled as per the disability certificate (Ex.P1), the disability evaluated being to the extent of 50%. The tribunal, however, assessed the functional disability to the extent of 25% and on that basis awarded total compensation in the sum of Rs. 1,86,334/-, it inclusive of awards under the various heads including permanent disability, loss of income, pain & sufferings, conveyance & special diet and medical expenses. The liability to pay the compensation was fastened on the insurer, its plea of breach of terms and conditions of the insurance policy having been rejected.

2. The claimant is in appeal seeking enhancement pressing only for increase in the award under the head of pain & suffering on which account the tribunal granted Rs. 25,000/- only. The insurer is in appeal reiterating its plea of breach of terms and conditions of the insurance policy contending that the driving licence (Ex.R2W4/A) which the driver of the offending vehicle (third respondent) held on the relevant date had been issued on the basis of document which purported to be a licence but which, upon inquiry, had been found to be fake.

3. Having regard to the nature of injuries sustained, consequent permanent disability suffered as indeed the prolonged treatment of over one year undergone, the award under the head of pain & suffering is found to be inadequate. It is increased to Rs. 75,000/- thereby adding to the award the amount of Rs.50,000/- (Rupees Fifty Thousand Only). It is directed that the claimant would be entitled to

receive the said enhanced portion of the award with interest @ nine per cent (9%) per annum from the date of filing of the claim petition (15.07.2005) till payment.

4. The plea of the insurer for recovery rights must be rejected. Similar contention was rejected by this Court in identical fact-situation in *New India Assurance Co. Ltd. vs. Sahira & Ors.* decided on 13th July, 2017 with the observation to the following effect:-

> "*In view of the decision dated 12th July, 2017 in CM(M) 1104/2013 titled as M/s the New India Assurance Co. Ltd. vs. Sh Zakir Hussain & Anr., the plea based on document which was used for obtaining license for the period in question being fake, cannot be accepted, particularly in absence of any material indicating that the owner of the vehicle (the person insured) was party to any such design".*

5. The contention of the insurer in its appeal, thus, is rejected.

6. By order dated 24.02.2010 in MAC appeal no. 114/2010, the insurance company had been directed to deposit the entire awarded amount with interest with the tribunal. The amount still lying in deposit shall now be released to the claimant. The insurance company shall satisfy the enhanced portion of the award by requisite deposit with the tribunal within 30 days, making it available to be released.

7. Both the appeals are disposed of in above terms.

8. The statutory amount shall be refunded after proof is shown of the award having been satisfied.

R.K.GAUBA, J.

SEPTEMBER 06, 2017/nk