$~R-178

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

***Decided on: 8th September, 2017***

\+ MAC APPEAL No. 97/2010 and CM APPL.3126/2010, 3128/2010, 15661/2010

UNITED INDIA INSURANCE COMPANY LIMITED ..... Appellant

Through: Mr. Pankaj Seth, Advocate

versus

ANIL KUMAR & ORS. ..... Respondents

Through: Mr. O.P. Mannie, Advocate for R-1.

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

**JUDGMENT (ORAL)**

1. The first respondent was moving on his motorcycle bearing registration No.DL-8SA-J-2146 on 12.04.2007 with his friend Om Prakash @ Jaggu on the pillion, when he came to be involved in a motor vehicular accident caused due to negligent driving of Tata Tempo bearing registration No.DL-IL-E-6359, admittedly insured against third party risk with the appellant (the insurer) for the period in question. Both suffered injuries, each instituting accident claim case, the case of the first respondent being petition No.403/08. The tribunal clubbed the two cases and held inquiry and, by judgment dated 08.09.2009, accepted the evidence about negligent driving of the Tata

Tempo being the cause to the accident. The said finding has attained finality. The tribunal awarded compensation in the total sum of Rs.12,73,000/- in favour of the first respondent, calculating it thus:-

| Sl.No. | Head | Amount in (Rs.) |
|---|---|---|
| 1. | Medical Treatment | 5,000/- |
| 2. | Pain and suffering | 50,000/- |
| 3. | Attendant charges | 10,500/- |
| 4. | Loss of amenities of life | 5,000/- |
| 5. | Loss of income/loss of earning capacity/permanent disability | 11,92,000/- |
| 6. | Conveyance | 5,000/- |
| 7. | Special diet | 5,000/- |
| | Total<br>Rounded off to | 12,72,500-<br>12,73,000/- |

2. The insurer on which the liability to pay has been fastened has come up questioning the above mentioned award in the context of loss of earning capacity due to permanent disability, on the basis of assessment of the tribunal, that the claimant had suffered one hundred per cent (100%) functional disability.

3. It is noted that the injuries suffered by the appellant included both upper limbs crushed with loss of skin and tenderness besides multiple injuries on other parts of the body. The injuries to the upper limbs have rendered him permanently disabled, his functional

disability assessed (Ex.PW-6/A) by board of doctors to be fifty two per cent (52%), this having been proved by Dr. Sameer Mehta (PW-6), who was the member of the said board constituted by the medical superintendent of Babu Jagjivan Ram Hospital, Jahangir Puri, Delhi.

4. The tribunal has noted that the claimant was a driver by profession and on account of the above mentioned handicap, which is permanent, he has been rendered jobless as he cannot continue with the profession of driving motor vehicle, his limbs being not supportive. In these circumstances, the assessment made by the tribunal does not call for any interference.

5. The appeal is dismissed.

6. The insurance company had deposited the entire awarded amount with interest with UCO Bank, Delhi High Court Branch, New Delhi in terms of order dated 19.02.2010 and from out of such deposit, sixty per cent (60%) was allowed to be released to the claimant (respondent no.1) by order dated 30.08.2010. The balance shall also now be released to the claimant.

7. The statutory amount shall be refunded to the appellant insurance company.

8. The appeal along with accompanying applications stand disposed of in above terms.

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

**SEPTEMBER 08, 2017**
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