$~R-186

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

Decided on: 15th September, 2017

\+ MAC.APP. 131/2010 and CM 4167-4168/2010

NEW INDIA ASSURANCE CO LTD ..... Appellant

Through: None

versus

SHIVENDER PRASAD YADAV & ORS ..... Respondents

Through: None

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

JUDGMENT (ORAL)

1. The first respondent (claimant) had suffered injuries in a motor vehicular accident that occurred on 23.01.2006 due to the negligent driving of the motor vehicle described as Tata 407 Tempo bearing registration no.HR-38J-6536, which was admittedly insured against third party risk for the period in question with the appellant / insurance company (insurer). He instituted accident claim case (suit no.04/09) on 04.05.2006 claiming compensation, *inter alia*, on the averment that he has been rendered permanently disabled.

2. The Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 21.11.2009, accepted the said claim returning a finding that the claimant had become permanently disabled assessing his functional disability to the extent of 50%. It awarded

compensation in favour of the claimants fastening the liability on the insurer to pay, calculating as thus :-

Compensation for expenses incurred medical expenses	Rs.62,423/-
Compensation for conveyance	Rs.10,000/-
Compensation for special diet	Rs.10,000/-
Compensation for attendant charges	Rs.10,000/-
Compensation for loss of earning capacity	Rs.8,29,122/-
Compensation for pain and suffering	Rs.60,000/-
Compensation for loss of amenities of life	Rs.80,000/-
Compensation for physical disfigurement due to permanent disability	Rs.60,000/-
	Rs.11,21,545/-

3. The appeal was filed by the insurance company questioning the computation of compensation taking exception to the evaluation of the functional disability, assessment of wages and submitting that the awards under the non-pecuniary heads of damages towards pain and suffering, loss of amenities of life and physical disfigurement besides towards special diet and attendant charges were exorbitant.

4. The appeal was put in the category of 'regulars' as per order dated 10.05.2010. When it was taken up for hearing on 12.09.2017, the proxy counsel appearing for the counsel for the insurer took adjournment. When it is taken up again, there is no appearance on behalf of the appellant.

5. The Tribunal's record has been perused.

6. It is noted that the claimant had proved, *inter alia*, by his own evidence appearing as witness (PW-1) and examining Dr. Sanjay Kumar, Orthopedics Specialist (PW-2), a member of the board of doctors of Sanjay Gandhi Memorial Hospital that he has been

rendered permanently disabled, the extent of his disability having been assessed to the extent of 56% in relation to the right upper limb. PW-2, during the course of his testimony, affirmed that the power of gripping or pinching in the right hand of the claimant has been weakend. The evidence adduced shows that the claimant was employed as a worker in Britannia Biscuit Factory and the nature of his job would require constant use of his hands. The handicap assessed, thus, does affect his functional ability. In these circumstances, the question raised about the finding returned by the tribunal cannot be accepted.

7. The evidence adduced by the claimant about the wages, *inter alia*, on the basis of salary certificate (Ex. PW1/2) remained un-impeached during the inquiry. In these circumstances, calculation of loss of earning capacity by the tribunal cannot be faulted.

8. Given the nature of injuries and the permanent disability consequently suffered, the non-pecuniary damages awarded by the tribunal cannot be said to be exorbitant.

9. The appeal is dismissed. The pending applications also stand dismissed.

10. By order dated 05.03.2010, the insurance company had been directed to deposit the entire awarded amount with interest with UCO Bank, Delhi High Court Branch. Fifty percent (50%) of the said amount was released in terms of the order dated 10.05.2010. The balance lying in deposit with accrued interest shall now be released to the claimant.

11. The statutory deposit made by the insurance company shall stand forfeited as costs in favour of the Delhi High Court Legal Services Committee.

R.K.GAUBA, J.

SEPTEMBER 15, 2017

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