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

Decided on: 27th September, 2017

\+ MAC.APP. 302/2014

BHARTI AXA GENERAL INSURANCE COMPANY LTD ..... Appellant

Through: Mr. Pankaj Gupta for Ms. Suman Bagga, Advocate

versus

NEELKANTH DEY & ORS ..... Respondents

Through: Mr. Manish Sharma, Mr. Sanjeev Sharma and Ms. Malika Sharma, Advocates for R-1

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

JUDGMENT (ORAL)

1. On the accident claim case (petition no.138/12) instituted by the first respondent on 09.07.2012, the Motor Accident Claims Tribunal (Tribunal), by judgment dated 27.11.2013, granted compensation in the total sum of Rs.46,49,000/- and has fastened the liability on the appellant / insurance company (insurer), it concededly being the insurer against third party risk in respect of the motor vehicle described as Honda City car bearing registration no.DL-3C-BE-4508 on account of negligent driving of which by the second respondent the accident is stated to have occurred, the vehicle being registered in the name of the third respondent.

2. The insurer by the present appeal questions the award primarily assailing the calculation of Rs.30,77,000/- as future loss of income on the basis of finding that the claimant has been rendered functionally disabled to the extent of 100%. It appears the claimant had relied on the disability certificate (Ex. PW1/3) issued by a board of doctors of Pt. Madan Mohan Malaviya Hospital. Ms. Anshu Goel (PW-2), a member of the said medical board also appeared in the course of inquiry. In addition to such evidence, the claimant relied on his own testimony, he appearing as PW-3, besides that of his attorney Shubhankar Dey (PW-1).

3. On perusal of the evidence of all the three witnesses, this court finds that the medical condition on account of which the claimant has been found to be disabled to such an extent has not been elaborated. It is noted that the disability certificate itself indicted that it was not final opinion as the case would require further re-evaluation. The disability certificate, at best, is an opinion of medical experts. But, in order to accept such opinion, and to act upon it to reach findings on facts concerning the functional disability, the tribunal should have elicited further information particularly about the nature and effect of the injuries suffered in the accident. The evidence led is found to be deficient in this context.

4. The learned counsel for the claimant fairly conceded at the hearing that the evidence could have been more elaborate. Thus, he requests that while the appeal of the insurance company may be allowed, the matter may be remitted to the tribunal so that the claimant may lead further and more clear evidence.

5. For the above reasons, the impugned judgment is set aside. The claim case is remitted to the tribunal for further inquiry in accordance with law so as to adjudicate on the computation of compensation afresh. For such purposes, the claimant will be entitled to lead further evidence followed by opportunity being given to the contesting parties to lead evidence in rebuttal, if any. The parties shall appear before the tribunal on 30.10.2017.

6. In view of the above, it will be advisable that the tribunal also refers the claimant for re-evaluation of his disability by a board of doctors.

7. By order dated 31.03.2014, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General of this court within the period specified and from out of such deposit, sixty percent (60%) was allowed to be released to the claimants. The amount already released to the claimants will be liable to be adjusted against the fresh award that is expected to be passed on conclusion of further inquiry. Ordered accordingly. The balance lying with the Registry shall presently be refunded to the insurance company with accrued interest.

8. The statutory amount shall also be refunded to the insurance company.

9. The appeal is disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 27, 2017
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