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

% **Date of Decision:4th August, 2017**

\+ MAC.APP. 371/2013

RELIANCE GENERAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. Pankaj Seth, Advocate

versus

ROBIN @ ROHTASH & ORS. ..... Respondents
Through: Ms. Purnima Sharma, Advocate for respondent No.1

\+ MAC.APP. 187/2017

ROBIN @ ROHTASH & ORS ..... Appellants
Through: Ms. Purnima Sharma, Advocate for appellant no. 1

versus

RELIANCE GENERAL INSURANCE CO LTD ..... Respondent
Through: Mr. Pankaj Seth, Advocate

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The Claims Tribunal awarded compensation of Rs.20,10,000/- which is under challenge in these appeals.

2. On 24th September, 2009 at about 4:40 PM, Robin@ Rohtash was

going on his motorcycle bearing registration No.HR 29U 6050 to Chhattarpur. When the motorcycle reached in front of Air Force Station, M B Road, Sangam Vihar, Delhi, a Swift car bearing No. HR 51AE 1561 going ahead of the motorcycle, suddenly applied brakes and stopped the car. However, Robin could not stop his motorcycle and he hit the Swift car and suffered grievous injuries.

3. Robin was taken to JPN Apex Trauma Centre, AIIMS by PCR and was admitted in Neuro-Surgery Department where he underwent surgery for his head injury. During the surgery, right FTP decomprerssive craniectomy along with lax duroplasty was done using at temparalis facia and placement of bone flap in abdomen was done. During the operation, seven units of blood were transmitted to Robin. Robin was discharged on 07th October, 2009. On 02nd December, 2009, Robin was again admitted in hospital for cranioplasty using antilogous bone graft stored in the anterior abdominal and was discharged on 10th December, 2009. As per the Disability Certificate dated 15th November, 2011, Robin is a case of right FTP decompressive craniectomy and has suffered 100% permanent impairment in relation to his head injury. Robin is unable to speak, walk without assistance and also suffers seizures

4. The Claims Tribunal awarded a compensation of Rs.20,10,000/- as per the break-up given hereunder:-

Compensation for medical expenses:	Rs.63,000/-
Compensation for future medical expenses:	Rs.50,000/-
Compensation for conveyance and wheel chairs:	Rs.1,00,000/-
Compensation for special diet:	Rs.50,000/-

Compensation for attendant charges:	Rs.2,00,000/-
Compensation for pain and sufferings:	Rs.2,50,000/-
Compensation for loss of amenities, disfiguration and loss of expectations of life:	Rs.2,50,000/-
Compensation for loss of marriage prospects:	Rs.1,00,000/-
Compensation for permanent physical disability and loss of earning capacity:	Rs.9,51,000/-
	Rs.20,14,000/-
Less amount received	- Rs.4,000/-
Total:	Rs.20,10,000/-

5. Learned counsel for the appellant urged at the time of hearing that it is submitted that the claimant was contributory negligent as he hit the swift car from behind. It is further submitted that the compensation awarded to the claimant is on higher side and the permanent functional disability is not 100%.

6. Learned counsel for the claimant urged at the time of hearing that the compensation awarded under the head of *'loss of earning capacity'* be enhanced. It is submitted that the claimant was working on a ship/vessel as a Oiler in UAE and was earning Rs.20,000/- per month whereas the Claims Tribunal has taken minimum wages of Rs.4401/-. It is further submitted that the claimant worked on ship from 2006 to 2009 and he sent Rs.36,026/- and Rs.28,043/- to his family by sending the same in the account of his grandfather and brother respectively, which has been proved by Ex.PW2/O and Ex. PW2/P respectively.

7. Robin is present in person in the Court today along with his father and

his condition has been seen. This Court is of the view that the Claims Tribunal has rightly held that the functional disability of claimant Robin as 100%. However, the loss of earning capacity taken by the Claims Tribunal is on lower side but the enhancement is not warranted considering that the claimant was contributory negligent. This Court is of the view that enhancement under the head 'loss of earning capacity' would neutralize the reduction on account of contributory negligence. In that view of the matter, compensation awarded by the Claims Tribunal is upheld.

8. Both the appeals are dismissed.

9. Insurance Company has deposited the entire award amount and the said amount has been disbursed.

10. The statutory amount be refunded to the appellant in appeal bearing MAC APP No.371 /2013.

11. Copy of this judgment be given *dasti* to counsel for the parties under the signature of the Court Master.

AUGUST 04, 2017 **J.R. MIDHA, J.**

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