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

Decided on: 12th October, 2017

\+ MAC APPEAL No. 344/2011

KAILASH YADAV ..... Appellant
Through: None.

versus

RAM CHARAN YADAV & ORS. ..... Respondents
Through: Mr. Pankaj Seth, Adv. for R-3.

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

JUDGMENT (ORAL)

1. The appellant was claimant before the motor accident claims tribunal in suit no. 166/2010 instituted on 21.04.2010 whereby he sought compensation under Section 166 of Motor Vehicles Act, 1988 for injuries suffered by him in a motor vehicular accident that had occurred on 07.01.2010 due to negligent driving of truck bearing registration no. DL 1M 2616, which was admittedly insured against third party risk with the third respondent (insurer) for the period in question. The tribunal held inquiry and, by judgment dated 23.11.2010, awarded compensation in the sum of Rs. 13,91,620/-, directing the insurer to pay the same with interest. It is noted that the tribunal has awarded compensation under various heads including Rs. 11,000/- towards medical expenditure, Rs. 2,31,420/- towards artificial limb, Rs. 6,45,200/- on account of loss of income due to permanent

disability, Rs. 1,00,000/- each towards pain & suffering, loss of enjoyment of amenities of life and disfigurement and Rs. 2,04,000/- towards attendant charges.

2. The appeal was filed seeking enhancement of the compensation, the prime contentions raised being that the case should have been treated as one of total functional disability (100%); the expenditure towards treatment including that on account of special diet granted is inadequate; and that the tribunal has ignored the fact that the artificial limb would need replacement after four to five years, the minimum requirement being of three replacements.

3. The appeal was put in the category of 'regulars' as per order dated 18th April, 2012. On appeal being taken up, there is no appearance on behalf of the appellant. The matter has been considered with the assistance of the learned counsel for the insurer and by perusal of the tribunal's record.

4. It is noted that as per disability certificate, the appellant had lost both lower limbs below knee, his disability as per medical opinion (Ex.PW-2/61) being to the extent of 80%. Given the extent of the amputation and the fact that the claimant was earning his livelihood as a manual labourer, the assessment by the tribunal of the functional disability to be to the extent of 80% does not call for interference.

5. Though the appellant had claimed that he had incurred expenditure in the sum of Rs. 50,000/-, no proof in such regard was adduced, the treatment apparently having been taken free of cost from a Government facility. Be that as it may, compensation towards

special diet should have been added and an amount of Rs.20,000/- under the said head is now granted.

6. There is merit in the grievance raised in the appeal with regard to the need for arrangement for replacement of the artificial limb. Judicial notice may be taken of the fact that the material generally used in the artificial limb does not last life long, it primarily being made of such material as is subject to wear and tear. In these circumstances, the plea for its future replacements is accepted. The grant of Rs. 2,31,420/- was on the basis of quotation (Ex.PW-2/62) which was given on 12.10.2010. Apparently the cost would have increased over the years. The increase in cost can be taken care of by levy of interest against such amount for arrangement of two artificial limbs as replacements such amount, however, to be released on appropriate medical advice being furnished, as and when the need arises.

7. In the above facts and circumstances, the compensation is increased by (2,31,420 x 2 + 20,000) Rs. 4,82,840/-, raising it to (13,91,620 + 4,82,240) Rs. 18,73,860/-, rounded off to Rs. 18,74,000/-. The enhanced portion of the award shall carry interest @ 9% per annum from the date of filing of the petition till payment by the insurer.

8. The insurer is directed to make the requisite deposit with the tribunal within thirty days. The amount shall be released by the tribunal to the claimant/appellant in the form of interest bearing fixed deposit receipt taken out from a nationalized bank for a period of ten years with provision for auto renewal, such amount to be released in

due course for arrangement of replacement of the artificial limb after proper medical advice to the satisfaction of the tribunal being shown.

9. The appeal is disposed of in above terms.

R.K.GAUBA, J.

OCTOBER 12, 2017
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