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

Decided on: 19th September, 2017

\+ MAC APPEAL No. 177/2016

THE ORIENTAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. Pankaj Seth, Adv.

versus

SURENDER KUMAR DEVGUN & ORS. ..... Respondents
Through: Mr. B.K. Sharma, Adv. for R-1.

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

JUDGMENT (ORAL)

1. The first respondent (claimant) was 64 years old working as Manager with a private entity (RDA Overseas Pvt. Ltd.) when he suffered injuries in a motor vehicular accident that occurred on 23.05.2007, it involving two motor vehicles one being Rajasthan Roadways bus bearing registration no. RJ 01 PA 0648 (bus) and the other being Trolla truck bearing registration no. HR 38V 5077 (the truck). He instituted accident claim case (MACT 1078/2007) on 15.12.2007 impleading the driver, owner and insurer of the truck, they now being the second and third respondents in addition to the appellant respectively in the appeal. After inquiry, the tribunal upheld the case of the claimant, by judgment dated 22.12.2015, holding the truck driver to be negligent and responsible for the collision and

injuries suffered by the claimant. The compensation in the total sum of Rs. 7,82,242/- was awarded, it inclusive of Rs. 2,35,200/- calculated as loss of future earning capacity due to the permanent disability suffered on account of the injuries sustained, the functional disability having been evaluated by the tribunal to the extent of 14%, the evidence having shown, particularly, the testimony of Arun Kumar Sharma (PW-2), Director of the employer company that the claimant had been working at consolidated salary of Rs. 20,000/- per month but had to leave the job after the accident due to his inability to continue, the deposition of the claimant (PW-4) indicating he had remained unfit for pursuing any gainful employment for a period of one year.

2. The insurer of the truck on which the liability to pay the above-mentioned compensation with interest added @ 9% per annum was fastened, by the appeal at hand, questions the calculation of loss of future earning capacity on the ground it was wrongly computed with the multiplier of 7, ignoring the fact that the loss of income for one year (Rs. 2,40,000/-) having been taken care of, the future earning capacity loss would inure from the time when the claimant would have attained the age of 65 years in which view, the multiplier of 5 would apply. The insurance company also submits that in such calculation, the income-tax liability would also have to be deducted on the income of Rs. 2,40,000/-, going by the prevalent rates of income-tax for the financial year 2007-2008, the income-tax liability being Rs. 24,000/-.

3. Both contentions being correct must be accepted. Thus, the net income would be (Rs. 2,40,000 – 24,000) Rs. 2,16,000/-. For the functional disability of 14%, with the multiplier of 5, loss of future

earning capacity comes to (2,16,000 x 14 ÷ 100 x 5) Rs. 1,51,200/-. This would mean the award has to be reduced by (2,35,200 – 1,51,200) Rs. 84,000/-. The award is reduced to (7,82,242 – 84,000) Rs. 6,98,242/-, rounded off to Rs. 6,99,000/- (Rupees Six Lakh Ninety Nine Thousand Only). It shall carry interest as levied by the tribunal.

4. In terms of order dated 26.02.2016, the insurance company had deposited the entire awarded amount with upto date interest, and from out of such deposit 50% (fifty percent) was allowed to be released to the claimants. The tribunal shall now release the balance in terms of the modified award to the claimant refunding the excess to the insurance company.

5. The appeal is disposed of in above terms.

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

R.K.GAUBA, J.

SEPTEMBER 19, 2017
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