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

Decided on: 30th August, 2017

+ **MAC.APP. 185/2016 and CM APPL.7023/2016**

THE NEW INDIA ASSURANCE CO. LTD. Appellant

Through: Mr. Shoumik Mazumdar proxy
counsel for Mr. Pankaj Seth,
Advocate

versus

USHA & ANR.

..... Respondents

Through: Mr. Mayank Khurana,
Advocate for R-1.
Ms. Mamta, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Usha, the first respondent, suffered injuries in a motor vehicular accident that occurred on 01.09.2012, involving a motor vehicle described as tractor bearing registration no.HR-13B-4156, admittedly insured against third party risk with the appellant insurance company (insurer). On her claim petition (Suit No.348/2012), the Motor Accident Claims Tribunal (the tribunal), by judgment dated 08.01.2016, granted compensation in the sum of Rs.4,10,575.10p directing the insurance company to pay with interest @ nine per cent (9%) per annum.

2. The insurer is in appeal raising three contentions; one, that there was no issue framed on the question of negligence; second, that the tribunal ignored the disability certificate (Ex.PW-1/105) indicating the extent of permanent disability to be 8% in relation to right lower limb and went on to assess the functional permanent disability to be to the extent of 10% to award loss of future earnings; and third, that though the vehicle in question was light motor vehicle (LMV) and the driver thereof (second respondent) did hold a licence for LMV, there was no endorsement for purposes of a transport vehicle.

3. Having heard the learned counsel on both sides and having perused the record, the appeal of the insurance company on all the above noted three contentions is found to be meritless.

4. Though there was no separate issue on the question of negligence, the tribunal did consider the question under the cover of first issue framed where the anxiety posed was as to whether the claimant is entitled to get compensation, it being a case of claim under Section 166 of the Motor Vehicles Act, 1988. Having regard to the multiple fractures in various bones in the right lower limb suffered and the permanent effect in their aftermath, the assessment of functional disability to the extent of 10% cannot be said to be excessive.

5. Though the tribunal was not correct in observing that the insurance company could file separate suit to recover the compensation from the registered owner of the vehicle, if there was breach of the terms and conditions of the insurance policy, the ground on which such recovery rights are pressed do not impress. The rule of

main purpose and concept of fundamental breach applies. [See *National Insurance Company vs. Swaran Singh* (2004) 3 SCC 297].

6. The appeal along with accompanying application is, therefore, dismissed.

7. By order dated 26.02.2016, the insurance company had been directed to deposit the awarded amount with upto-date interest within the period specified with the tribunal and out of such deposit fifty per cent (50%) was allowed to be released, the balance ordered to be kept in interest bearing fixed deposit receipt. The tribunal shall now release the balance lying in deposit to the claimants in terms of the impugned judgment.

8. Statutory deposit shall be refunded to the appellant insurance company,

AUGUST 30, 2017

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R.K.GAUBA, J.