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

*Decided on: 02<sup>nd</sup> August, 2017*

+ **MAC.APP. 377/2005**

**D.T.C.**

**..... Appellant**

Through: Mr. Jyotindra Kumar, Advocate

versus

**HARISH AHUJA & ANR.**

**..... Respondent**

Through: Mr. Krishna Chandra Dubey,  
Advocate for R-1

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**JUDGMENT (ORAL)**

1. The first respondent was employed with the appellant as a Welder, Grade-2, at the relevant point of time. On 16.10.1995, when he was on duty at Shahdara Depot, he was injured on account of rash driving of bus bearing no.DEP-9140 of the appellant. On the accident claim case (suit no.33/2003) instituted by him, the Motor Accident Claims Tribunal (Tribunal) held the appellant and the driver of the bus liable jointly and severally to pay compensation. The compensation was assessed in the total sum of Rs.2,26,964/-. This included Rs.1,91,964/- calculated as the loss of future earning capacity on the disability factor of 27% besides Rs.35,000/- as composite

compensation towards mental pain, agony and loss of enjoyment of life.

2. The appeal is pressed on the solitary ground that the claimant was entitled to the benefit under the Employees' State Insurance Act, 1948 and proof was adduced of he having received Rs.67,060/- from the Employees State Insurance Corporation (ESIC). The submission is that in terms of Section 53 of the Employees State Insurance Act, 1948, the said amount must be deducted from the compensation awarded by the Tribunal. This contention must be rejected in view of the decisions of the Supreme Court in *Helen C. Rebello and Ors., Vs. Maharashtra State Road Transport Corporation and Anr., 1999 (1) SCC 90* and *Vimal Kanwar and Ors. Vs. Kishore Dan and Ors., (2013) 7 SCC 476*. The amount received from ESIC is a pecuniary advantage which has no co-relation with the liability of the appellant in terms of Section 166 of the Motor Vehicles Act, 1988.

3. The appeal is devoid of substance and is dismissed.

4. The appellant is directed to satisfy the award. In case of default, the claimants are at liberty to take out appropriate proceedings before the Tribunal for its enforcement.

5. The statutory amount shall be refunded after proof is shown of the award having been satisfied.

**R.K.GAUBA, J.**

**AUGUST 02, 2017**

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