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

Decided on: 13th September, 2017

\+ MAC APPEAL No. 277/2010

UNITED INDIA INS. CO. LTD. ..... Appellant

Through: Mr. P. Acharya for Mr. K.L. Nandwani, Adv.

Versus

WASIM AHMAD & ORS. ..... Respondents

Through: Mr. R. K. Bachchan, Adv. for R-1.

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

JUDGMENT (ORAL)

1. The first respondent sustained injuries and suffered consequent permanent disability on account of motor vehicular accident that occurred on 01.07.2006 at about 7:30pm due to negligent driving of three wheeler scooter bearing registration No. DL 1RF 1194, admittedly insured against third party risk with the appellant insurance company. He instituted accident claim case (suit no. 743/2006) on 11.12.006 seeking compensation under Sections 166 and 140 of Motor Vehicles Act, 1988. The Tribunal awarded compensation in the total sum of Rs. 4,60,535/- and directed the insurance company to pay with interest, calculating it thus:-

S.No.	Under heads	Compensation
1.	Cost of medicines	Rs. 1143.00
2.	Prospective loss of income	Rs. 1,41,308.00
3.	Loss of income for four months	Rs. 13,084.00
4.	Pain & sufferings	Rs. 50,000.00
5.	Permanent disfigurement & continuing permanent disability	Rs. 1,00,000.00
6.	Marriage prospects	Rs. 1,00,000.00
7.	Loss of amenities	Rs. 50,000.00
8.	Special Diet & conveyance	Rs. 5,000.00
	Total	Rs. 4,60,535.00

2. The appeal at hand was filed by the insurer submitting that the tribunal has fallen into error by factoring in the element of future prospects of increase to the extent of 50% over and above the income notionally assessed with the help of minimum wages so as to grant award on account of prospective loss of income due to disability which has been evaluated to the extent of 20%, this on the basis of disability certificate dated 10.10.2008 (Ex.PW-1/B) issued by board of doctors of Lal Bahadur Shastri Hospital of Govt. of NCT of Delhi affirming that the claimant suffers from permanent physical impairment in the left lower limb to the extent of 45% due to the fractures in the thigh and fibula bones, the same having been fixed by nails through surgical procedure. While it may be correct that against the backdrop of assessment of the earnings with the help of minimum

wages, the element of future prospects of increase should not have been included, as pointed out by the learned counsel for the claimant at the hearing, the Tribunal fell into error by making a deduction of 1/3rd to calculate the loss of future income which also was erroneous. If both errors are removed, the calculation of loss of future earnings due to disability would work out the same way as done by the Tribunal.

3. The awards under the non-pecuniary heads of damages in the given facts and circumstances of the case cannot be said to be excessive. The appeal is devoid of substance and is dismissed.

4. The statutory amount shall stand forfeited as costs imposed to be made over to Delhi High Court Legal Services Authority by the registry.

5. The appellant was directed to deposit the entire awarded amount with UCO Bank, Delhi High Court Branch as per order dated 24.04.2001 as a pre-condition to the stay against its enforcement. Fifty per cent (50%) of the said deposited amount was released to the claimant by order dated 24.02.2011. The balance shall also now be released to the claimant.

R.K.GAUBA, J.

SEPTEMBER 13, 2017
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