$~R-204

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

Decided on: 13th September, 2017

\+ MAC APPEAL No. 300/2010 and CM APPL.8427/2010 (stay)

NEW INDIA ASSURANCE COMPANY LIMITED
..... Appellant
Through: Mr. L.K. Tyagi, Advocate

Versus

PARVEEN @ RAJ KUMAR & ORS. ..... Respondents
Through:

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

JUDGMENT (ORAL)

1. The first respondent, then aged about 30 years, statedly working as a salesman in a private establishment, suffered injuries in a motor vehicular accident that occurred on 17.12.2005 due to negligent driving of vehicle described as Tata Sumo bearing registration No.DL-1V-5279, admittedly insured against third party risk with the appellant insurance company (insurer) for the relevant period. On his claim petition, (Suit No.981/2008) instituted on 28.03.2006, the tribunal after inquiry, by judgment dated 31.03.2010, returned a finding that the accident had occurred due to negligent driving of said vehicle by Harminder Singh (the second respondent), it being the vehicle registered in the name of BSES Rajdhani Power Limited (the third

respondent). The tribunal awarded compensation in the total sum of Rs.6,13,556/-, fastening the liability on the insurer to pay with interest.

2. The insurer by the appeal at hand questions the award arguing that the compensation computed under the heads of prospective loss of income (Rs.2,94,058/-) is excessive since the permanent disability assessed to the extent of forty three per cent (43%) was improper, exception also being taken to the non-pecuniary heads of damages awarded for pain and suffering, permanent disfigurement and curtailment of enjoyment of life.

3. Having heard the learned counsel for the appellant and having gone through the tribunal's record, this court finds no substance in the appeal.

4. The claimant had proved, by requisite record, that he had suffered multiple injuries including fracture of the femur bone, his knee, tibia bone, skull, hip and right hand also having been wounded. He underwent prolonged treatment including surgical procedure. He was examined by board of doctors of Guru Teg Bahadur Hospital which had issued disability certificate dated 22.02.2010 (at page 153 of the tribunal's record) affirming the disability to be 43% in relation of the right lower limb. Having regard to the nature of avocation and the injuries and the aftermath suffered, as duly explained by the claimant, in the course of his evidence (as PW-2) through the affidavit (Ex.PW-2/A) tendered, the assessment by the tribunal of the functional disability to the extent of 43% does not call for any interference.

5. Given the above facts, the awards under the non-pecuniary heads of damages included in the compensation are also not found to be excessive.

6. The appeal is dismissed.

7. The insurance company had deposited the entire awarded amount with up-to-date interest in terms of order dated 14.05.2010. Seventy five per cent (75%) of the said amount was allowed to be released by order dated 10.09.2010. The balance amount shall also now be released to the claimant in terms of impugned judgment.

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

9. The appeal along with accompany application stands disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 13, 2017
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