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

Decided on: 18th July, 2017

+ **MAC APPEAL No. 348/2008**

TATA AIG GENERAL INSURANCE CO. LTD. Appellant

Through: **Ms. Shantha Devi Raman &**

Mr. Arihant Jain, Advs.

versus

JEEWAN KRISHAN BHATI & ORS. Respondents

Through: **Mr. Jayant K. Mehta & Ms.**

Suveni Bhagat, Advs.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The first respondent (claimant) had suffered injuries in a motor vehicular accident that had occurred on 15.01.2004 statedly due to rash driving of car bearing registration no. DL 3CY 3277 (the car) by the second respondent, it being registered in the name of the third respondent and insured against third party risk for the period in question with the appellant insurance company (insurer). He filed accident claim case (suit no. 1051/2007) on 07.06.2004 before the motor accident claims tribunal which, after inquiry, by judgment dated 05.03.2008, upheld the case of claim for compensation on the principle of fault liability. The finding with regard to the negligence on the part of the car driver has attained finality as the same was not

challenged. By the impugned judgment, the tribunal awarded compensation in the sum of Rs. 4,50,200/- and directed the insurer to pay with interest. The insurer has filed the present appeal and presses it on two grounds. The first contention of the appellant is that the tribunal fell into error by accepting the claim of the first respondent about he having suffered functional disability to the extent of 25%. The second contention is that instead of suffering any loss of income, the investigation by the insurance company had brought out that after the accident, the salary and emoluments earned by the claimant had in fact increased.

2. Having heard the learned counsel for the appellant, this Court finds no substance in any of the above- noted contentions.

3. It has to be remembered that the functional disability is to be assessed having regard to the nature of avocation and the responsibilities borne by the victim. The evidence shows that the claimant was working as sales executive with a private entity Hansa Paints & Chemicals. The very nature of job would require he to move around and be in the field. The disability certificate (Ex.PW-1/45), issued by the board of doctors of Babu Jagjeevan Ram Memorial Hospital, Jahangirpuri on 18.03.2006 certified that the appellant has suffered shortening of his lower limb which has been assessed to have rendered him permanently disabled, the extent of disability being evaluated as 25%.

4. While it is correct that the disability assessed by the medical opinion may not always be equivalent to the functional disability. But then the assessment of functional disability would depend from case to

case. Therefore, the judgment in *National Insurance Company Ltd. Vs. R.K. Jain 2013 ACJ 2609*, cited by the appellant is of no assistance to the contention urged. Having regard to the nature of job and the responsibilities borne by the claimant, and the nature of injuries in the extent suffered, as confirmed by the medical opinion, the conclusion reached by the tribunal about the functional disability does not call for any interference.

5. The increase in the emoluments earned by the claimant was not supported by any formal evidence. The contention is based on the report of investigator engaged by the insurance company. Even if such report were to be accepted, it does not result in the conclusion that the increase in the earnings is notwithstanding the injuries suffered and not on account of hardwork rendered by the claimant.

6. For the foregoing reasons, the appeal is devoid of any substance and is consequently dismissed.

7. By order dated 30.05.2008, the insurance company had been directed to deposit the awarded amount with interest with the Registrar General, and out of such deposit 50% was allowed to be released. The balance shall now be released in terms of the impugned judgment.

8. Statutory deposit shall be refunded.

R.K.GAUBA, J.

JULY 18, 2017

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