$~R-361

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

Decided on: 25th October, 2017

\+ MAC APPEAL No. 566/2011 & CM No. 11615/2011

NATIONAL INSURANCE COMPANY LTD. ..... Appellant
Through: Mr. Pankaj Seth, Adv.

versus

JOHN M. KOSHY & ORS. ..... Respondents
Through: None.

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

JUDGMENT (ORAL)

1. The first respondent (the claimant), then aged about 22 years, a student of final year of the course leading to the degree of Bachelor of Arts, suffered injuries in motor vehicular accident that took place on 09.11.2002 due to negligent driving of motor vehicle described as car bearing registration no. HR 01K 0992, which was admittedly insured against third party risk with the appellant insurance company for the period in question. On his accident claim case (suit no. 844/2008) on 30.04.2003, the tribunal held inquiry and, by judgment dated 30.03.2011, accepted the case that the accident had occurred due to negligent driving of the car by the third respondent, it being registered

in the name of the second respondent and insured against third party risk with the appellant insurance company. The tribunal held, on the basis of evidence led, including disability certificate dated 12.03.2010 issued by board of doctors of Pandit Madan Mohan Malviya Hospital (page 157 of the tribunal's record) that the claimant had suffered disability to the extent of 21% (twenty one percent). It awarded compensation in the total sum of Rs. 18,92,240/- and fastened the liability to pay the said amount on the appellant insurance company, the said amount inclusive of Rs. 15,42,240/- towards loss of future income due to disability.

2. The appeal by the insurer is pressed on the contention that since the claimant had gone on to pursue higher studies and had even taken up gainful employment from 11.07.2005 onwards, there was no occasion for any award being granted under the head of loss of income due to functional disability. The contention only needs to be noted and rejected. The tribunal has properly dealt with the issue and has set out sound reasons to grant the award under the said head. The effect of the disability suffered to the extent of 21% which is in relation to the spinal column would adversely impact not only the quality of life but also the capacity of the claimant to earn commensurate with the qualification which he has attained over the period with sheer grit and perseverance.

3. The award, therefore, is found to be not suffering from any error. The appeal is dismissed.

4. By order dated 03.06.2011, the insurance company had been directed to deposit the entire awarded amount with the Registrar

General and out of such deposit, 50% was allowed to be released. The registry shall now release the balance payable to the claimant.

5. The statutory amount shall be refunded.

R.K.GAUBA, J.

OCTOBER 25, 2017
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