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

Decided on: 4th July, 2017

\+ MAC APPEAL 258/2017 and CM APPL.10221/2017 (stay)

ORIENTAL INSURANCE CO LTD ..... Appellant
Through: Mr. R.K. Tripathi, Advocate

versus

DEEPAK SINGH & ORS ..... Respondents
Through: Mr. Varun Sarin, Advocate with Mr. Viraj Goel, Advocate for R-1.

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

JUDGMENT (ORAL)

1. The first respondent suffered injuries in a motor vehicular accident on 16.03.2014 involving scooter No.DL-1SS-4600 (scooter) driven by the third respondent it being owned by the fourth respondent and insured with the appellant insurance company against the third party risk for the relevant period, the collusion have taken place when motorcycle No.DL-5SAD-0255 (motorcycle) driven by the first respondent (the claimant) came to be hit by the scooter, the latter having been driven in a rash or negligent manner. He filed accident claim case (Suit No.5559/2016) in the wake of Detailed Accident Report (DAR) submitted by the local police against the backdrop of investigation into corresponding First Information Report (FIR) No.271/2014 of Police Station Mukherjee Nagar. The Tribunal, on the

basis of evidence placed before it, passed the judgment dated 07.12.2016 whereby compensation was awarded in the sum of Rs.2,06,000/- in favour of the claimant and since the scooter was insured against third party risk with the appellant company it was burdened with the liability to pay within thirty days with interest @ 9% per annum.

2. The Insurance Company has come up in appeal questioning the award pressing two contentions; one concerning calculation of loss of income during treatment and the other concerning award on account of loss of enjoyment of life to the extent of Rs.50,000/-.

3. The claimant has appeared in response to the notice through counsel. The learned counsel appearing for the claimant submitted that he does not want to file any formal reply and is ready to argue on the basis of available material. Tribunal's record has been called for and perused.

4. The learned counsel for the claimant fairly conceded that there is no permanent disability suffered and, therefore, there was no evidence adduced as to loss of enjoyment of any amenities of life. In this view, the award of Rs.50,000/- under this head was not justified.

5. The claimant had relied on certificate (Ex.PW-1/8) submitted with DAR indicating he to be employed with a private company at sum of Rs.9500/- per month. Concededly, no formal evidence of such employment was led. The counsel for the claimant, on being asked, submitted he does not want remit or an opportunity to lead formal

evidence about employment and that he is ready to have the loss of income during treatment re-assessed on the basis of minimum wages.

6. There is no formal proof of educational qualifications of the claimant. In these circumstances, the minimum wages of Rs.8086/- per month will have to be taken into consideration. Since the claimant had himself submitted to the Tribunal inability to be in gainful employment for one and half month, the loss of income works out to (Rs.8086/- x 1.5) = Rs.12,129/- rounded off to Rs.12,200/-.

7. In this view, the total compensation which would be just compensation is calculated as (2,188/- + 10,000/- + 15,000/- + 12,200/- + 1,00,000/-) Rs.1,39,388/- rounded off to Rs.1,40,000/-

8. The compensation is accordingly reduced to Rs.1,40,000/-. Needless to add, it shall carry interest as levied by the Tribunal.

9. The appellant insurance company had been directed to deposit the awarded amount with interest with the Tribunal within the period specified in terms of order dated 15.03.2017. The counsel for the appellant submits the order has been complied with. The modified awarded amount with corresponding interest shall be released forthwith to the claimant and the balance amount refunded to the appellant insurance company.

10. Statutory amount, if deposited, shall also be refunded to the appellant insurance company.

R.K.GAUBA, J.

JULY 04, 2017/vk