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

Decided on: 22nd August, 2017

\+ MAC.APP. 322/2016 and CM APPL.13973/2016 (stay)

RELIANCE GENERAL INSURANCE CO. LTD...... Appellant

Through: Mr. Rajeev M. Roy, Advocate with Mr. P. Srinivasan, Adv.

versus

BRAHAM SINGH & ORS. ..... Respondents

Through: Mr. Tungesh, Advocate with Mr. Ved Tripathi, Advocate, Mr. Vidishu Kanoria, Advocate for R-1.

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

JUDGMENT (ORAL)

1. The first respondent had suffered injuries in a motor vehicular accident that occurred on 12.01.2009 due to negligent driving of motor vehicle described as Swaraj Mazda, bearing registration No.DL-IPB-3414, which was admittedly insured against third party risk for the period in question with the appellant insurance company (insurer). He instituted accident claim case (Suit No.502/2009) on 20.03.2009 which was decided by the tribunal on 22.01.2016 by the impugned judgment accepting his claim for compensation on account of fault liability, awarding compensation in the sum of Rs.7,03,929/- directing the insurer to pay with interest @ nine per cent (9%) per annum.

2. It appears that in the said award an amount of Rs.1,32,929/- was added towards medical expenditure. By subsequent order dated 17.02.2016, however, a correction was made by reducing the said component to Rs.84,410/- only thereby reducing the total award to Rs.6,55,410/-.

3. The insurer in appeal questions the computation of loss of future earning calculated at Rs.3,36,000/- on the basis of functional disability assessed at twenty five per cent (25%) submitting that there is no basis to the same.

4. Having heard the learned counsel for the insurer and for the claimant and having gone through the record, this court finds substance in the objection raised by the insurer.

5. The tribunal assumed that the claimant was employed in a factory for doing the job of repair of machinery which required use of lower limbs most of the time. The claimant has proved disability certificate (Ex.PW-1/X) which declares him permanently disabled to the extent of twenty four per cent (24%) in relation to the right lower limb, such evaluation being based on stiffness of the knee. The tribunal has taken his functional disability to be twenty five per cent (25%) which seems to be unfounded.

6. In the evidence, the claimant did not describe the nature of duties he was required to perform. He did not lead any other evidence on that score. Having regard to the fact that the disability assessed by medical opinion is twenty four per cent (24%) in relation to one of the lower limbs arising out of stiffness of the knee in that part of the body,

the functional disability is assessed by twelve per cent (12%) and the loss of future earning is calculated accordingly. On the income of Rs.8,000/-, as calculated by the tribunal, such loss with the multiplier of 14, correctly adopted by the tribunal, comes to (8,000/- x 12/100 x 12 x 14) Rs.1,61,280/- rounded off to Rs.1,62,000/-. This would mean the award needs to be reduced by (3,36,000/- - 1,62,000/-) Rs.1,74,000/-.

7. The total compensation, thus, comes to (6,55,410/- - 1,74,000/-) Rs.4,81,410/- rounded off to Rs.4,82,000/-. The award is accordingly modified. It shall carry interest as levied by the tribunal.

8. In terms of order dated 22.04.2016, the insurance company had deposited the entire awarded amount with upto date interest with the tribunal, out of which thirty per cent (30%) was allowed to be released. The tribunal shall release the balance amount to the claimant in terms of the modification ordered above. Refunding the excess to the insurance company.

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

10. The appeal along with accompanying application stands disposed of in above terms.

11. *Dasti.*

R.K.GAUBA, J.

AUGUST 22, 2017
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