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

Decided on: 13th October, 2017

\+ MAC APPEAL 309/2016

UNITED INDIA INSURANCE CO LTD .... Appellant
Through: None.

versus

SUNIL KUMAR & ORS ..... Respondents
Through: Mr. B.R. Sharma, Advocate for Respondent No. 1.

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

JUDGMENT (ORAL)

1. The first respondent (claimant) on 20.07.2015 had instituted accident claim case (suit no. 215/15) seeking compensation under Section 166 of Motor Vehicle Act, 1988 for injuries and permanent disability suffered on account of motor vehicle accident that had occurred on 05.06.2015 involving bus registration no. DL1PC9649 of Delhi Transport Corporation (DTC), admittedly insured against third party risk for period in question with the appellant insurance company (insurer). The tribunal held inquiry and found that the accident had occurred due to negligent driving of the DTC bus by its employee (second respondent/driver). It also found that the claimant had suffered permanent disability due to amputation of the left leg above

knee, such condition having been proved *inter alia* by disability certificate (Ex. PW1/6), the medical opinion being that the disability is 80% (permanent). The tribunal found the functional disability to be 70% and granted compensation inclusive on account of future loss of income arising from such disability, fastening the liability on the insurer.

2. In the appeal of the insurer, two contentions are urged. The first is that the negligence was not properly proved as there is nothing to corroborate the word of the claimant, he having appeared as his own witness (PW-1). This contention must be rejected as the evidence of PW-1 has gone unimpeached. He testified about the sequence leading to the occurrence as per which narration he had lost control and fallen out of the bus as it was put into sudden motion even while he was trying to board it. The best person to explain facts to the contrary was the driver of the bus who was never called upon to testify his version. In these circumstances the conclusion reached by the tribunal on the issue of negligence does not call for any inference.

3. The second contention concerns the evaluation of the handicap. Having regard to the amputation, the opinion of the tribunal on the issue of functional disability is found to be just and appropriate (See *National Insurance Company Vs. Preeti* in MACA 1068/16 decided on 24.08.2017).

4. The appeal is dismissed.

5. By order dated 18.04.2016 the appellant had been directed to deposit the entire awarded amount with interest with the tribunal and out of such deposit 50% was allowed to be released to the claimant in terms of the impugned judgment. The balance lying in deposit shall now be released to the claimant in terms of the impugned judgment.

6. The statutory amount shall be refunded to the appellant.

R.K.GAUBA, J.

OCTOBER 13, 2017
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