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

Decided on: 12th July, 2017

\+ MAC.APP. 353/2016

THE ORIENTAL INSURANCE CO LTD ..... Appellant
Through: Mr. A.K. Soni, Adv.

Versus

RAKESH KUMAR & ORS ..... Respondents
Through: Mr. H.R. Jha, Adv. for R-1.

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

JUDGMENT (ORAL)

1. The first respondent suffered injuries in a motor vehicular accident that occurred on 30.05.2012 due to negligent driving of car bearing registration no. DL 4CAB 7057, which admittedly was insured against third party risk with the appellant insurance company. On the claim petition (petition no. 175/2012), the tribunal held inquiry and by judgment dated 18.01.2016, awarded compensation in the sum of Rs. 19,74,200/- with interest @ 9% per annum calling upon the insurance company to pay. The insurer is in appeal questioning the computation on the ground that the tribunal wrongly assumed the functional disability suffered to be 100% as against the medical opinion assessing the disability to the extent of 31%.

2. A perusal of the evidence shows that by certificate dated 26.08.2014 (Ex.PW-3/A), a board of doctors of Madan Mohan Malviya Hospital of the Govt. of NCT of Delhi, the condition of the

claimant has been assessed to have been rendered handicapped, his physical disability being permanent to the extent of 31% in relation to his spine and limbs, such condition being non-progressive and not likely to improve.

3. The claimant has appeared in person with the counsel. He is walking with the support of wooden stick and is holding his neck in correct position with the support of a collar. It is stated that because of the injury to the spine he is unable to move his neck in either direction. Noticeably, the injuries have been assessed to have led to permanent disability to the above extent in relation to specific parts of the body and not in relation to the entire body. The evidence indicates the claimant was gainfully engaged as a driver of three wheeler scooter (TSR). Obviously, because of his present condition he would not be able to earn his livelihood as a TSR driver because the restriction in the movement of his neck would come in the way. But then, it cannot be said that he is rendered paraplegic wholly dependent for life, to the extent of being 100% disabled. He will have to equip himself with necessary skills to restore himself to a productive human being. The tribunal, it appears, was overzealous in its approach and assessed the functional disability to the extent of 100%, which cannot be upheld. In the assessment of this Court, the functional disability on which compensation will have to be awarded for loss of future income should be to the extent of 60%.

4. There is no formal proof of any regular income. Therefore, the tribunal correctly adopted the minimum wages of a skilled worker prevalent at the time at Rs. 8,528/- as the wages at that point of time

and applied the multiplier of 16. The compensation for loss of future earnings is, thus, recomputed as (8,528 x 60 ÷ 100 x 12 x 16) Rs. 9,82,425 rounded off to Rs. 10 lakhs.

5. It is noted that the Tribunal awarded Rs. 1 lakh each under the heads of pain & suffering and loss of amenities and Rs. 50,000/- under the head of loss of life expectancy. Given the condition to which the claimant has been reduced for the entire remainder of his life, non-pecuniary damages are inadequate. He is awarded Rs.1,50,000/- under each of these three heads.

6. Adding the other components granted by the tribunal, including on account of medical expenses; special diet, conveyance & attendant charges, the total compensation comes to (56,800 + 1,50,000 + 30,000 + 10,00,000 + 1,50,000 + 1,50,000) Rs. 15,36,800/-, rounded off to Rs. 15,37,000/. The award is modified accordingly. Needless to add it shall carry interest as levied by the Tribunal.

7. The insurance company had been directed by order dated 27.04.2016 to deposit the entire awarded amount with upto date interest with the tribunal and from out of such amount, thirty per cent (30%) was allowed to be released and balance kept in fixed deposit receipt. The Tribunal shall now release the balance in terms of the modified award refunding the excess, if any, to the insurance company.

8. The statutory amount shall be refunded.

9. The appeal is disposed of.

R.K.GAUBA, J.

JULY 12, 2017/nk