$~R-235

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

Decided on: 20th September, 2017

\+ MAC.APP. 530/2010

RELIANCE GENERAL INSURANCE CO. LTD. ... Appellant

Through: Mr. Arun Yadav, Advocate

versus

MAHESH SINGH SOLAL @ KAILASH CHAND & ORS .... Respondents

Through: None

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

JUDGMENT (ORAL)

1. The first respondent suffered injuries in a motor vehicular accident that occurred on 22.06.2007 due to the negligent driving of the motor vehicle described as Tempo Tata 407 bearing registration no.DL-1LE-1735 admittedly insured against third party risk with the appellant insurance company for the period in question. The injuries resulted in amputation of left lower limb above knee, the consequent disability having been found by a board of doctors issuing disability certificate (Ex. PW1/3) to be 80%.

2. On the basis of evidence led, the Motor Accident Claims Tribunal (Tribunal), by judgment dated 26.05.2010, concluded that the functional disability was 100%. It awarded compensation in the total

sum of Rs.16,74,280/- and fastened the liability on the appellant / insurance company to pay.

3. The above mentioned award includes Rs.11,24,280/- towards loss of earning capacity, which has been calculated with the help of minimum wages of Rs.3,470/- per month for an unskilled worker on which the element of future prospects of increase in income has been added.

4. The award is questioned by the insurance company on the ground that the element of future prospects of increase in income should not have been added. It thus pleads for its reduction accordingly. It is, however, noted that if the element of future prospects were to be kept out, the award under the head of loss of earning capacity would be reduced by Rs.3,74,760/-. At the same time, it is noted that the award towards the artificial limb granted by the tribunal is inadequate, in the sense it took care of the provision for prosthetic limb only once, as per the estimate given by Dr. P.K. Mehta (PW-2). The claimant was 23 years' old when the accident occurred rendering him permanently disabled. The artificial limb, a judicial notice can be taken, once provided will not last for life. It would not only need replacements but also regular maintenance adding to the expenditure required to be incurred. The compensation awarded in excess under the head of loss of earning capacity would deserve to be added under the head of cost of artificial limb.

5. In above view of the matter, this court declines to interfere with the total compensation awarded.

6. The appeal is dismissed.

7. By order dated 12.08.2010, the insurance company had been directed to deposit the entire awarded amount with the Registrar General of this court and by order dated 04.01.2011 out of such deposit, 50% (fifty percent) was allowed to be released to the claimant, the balance kept in fixed deposit with a nationalized bank. The Registry shall now release the balance lying in deposit to the claimant, refunding only the statutory deposit to the appellant / insurance company.

R.K.GAUBA, J.

SEPTEMBER 20, 2017
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