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

Decided on: 4th July, 2017

+ MAC.APP. 246/2016

NEW INDIA ASSURANCE COMPANY Appellant

Through: Mr. Ravinder Singh &
Ms. Raveesha Gupta,
Advocates.

versus

RATAN HALDAR & ORS Respondents

Through: Mr. Rajesh Dwivedi, Advocate

+ MAC.APP. 382/2016

RATAN HALDAR Appellant

Through: Mr. Rajesh Dwivedi, Advocate

versus

NEW INDIA ASSURANCE CO LTD & ORS Respondents

Through: Mr. Ravinder Singh &
Ms. Raveesha Gupta,
Advocates.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Both these appeals arise out of judgment dated 19.02.2016 of motor accident claims tribunal (tribunal) on the file of accident claim case registered as MAC No. 432/2016, it having been instituted by Ratan Haldar, appellant in MAC Appeal No. 382/2016, seeking

compensation for injuries suffered in motor vehicular accident that statedly occurred on 28.02.2010 at about 8.30. p.m., involving rash driving of rural transport vehicle (RTV) No. DL IVA 2947, it being covered by an insurance policy against third party risk issued by New India Assurance Company (insurer), appellant in MAC Appeal No. 246/2016.

2. The contention of the claimant before the tribunal was that the RTV was driven by Pankaj Kumar (second respondent in the claim petition) in a rash manner it having struck against the claimant, he suffering injuries which have rendered him permanently disabled. The RTV is stated to be registered in the name of Hirdesh (first respondent before the tribunal). The issue of negligence or rash driving on the part of the RTV driver was decided in favour of the claimant and the same is not challenged by any appeal including by the insurer. The said finding, thus, is taken as having attained finality.

3. The tribunal by the impugned judgment dated 19.02.2016 awarded compensation in the sum of Rs. 13,41,712/- and directed the insurer to pay the same with interest @ 12 % per annum. In arriving at the said amount of compensation, the tribunal added the future loss of income on the basis of conclusion that the claimant had suffered permanent functional disability to the extent of 100%, this, in contrast, to the disability certificate (Ex.PW-3/A) indicating the assessment by a board of doctors to be 75% permanent disability in relation to whole body. The tribunal also added Rs.50,000/- as compensation to take care of the needs for future treatment.

4. The insurance company has come up with MAC Appeal No. 246/2016 questioning the assessment of functional disability to the extent of 100% and the addition of Rs. 50,000/- towards future treatment, submitting it had no basis and also expressing grievance as to the rate of interest terming it as unduly high.

5. The claimant, on the other hand, by MAC Appeal No. 382/2016, has come up to seek enhancement of compensation stating that he has not been awarded adequate attendant charges and that the award towards future treatment is also on the lower side.

6. The prime issue of concern is the extent of disability. The learned tribunal, by observations in para 18 and 19, has computed the functional disability to be 100%, this on the basis of observation of the petitioner having appeared with the support of his sons telling the tribunal that he was unable to work or attend even the call of nature without support, the fingers of his hands having been rendered “completely immobile” and he being bed ridden, which, in the opinion of the tribunal, has rendered him in “quadriplegic stage”.

7. On perusal of the tribunal’s record, this Court finds that the observations recorded by the tribunal have actually no basis.

8. In his evidence as PW-1 on the strength of his affidavit (Ex.PW-1/A), the claimant only referred to the disability certificate stating that he had suffered disability to the extent of 75% in relation to whole body. There was no claim that this assessment was inadequate. Even while deposing orally, the claimant did not testify that he was unable to get back to any gainful work in the aftermath of the injuries suffered.

9. The disability certificate (Ex.PW-1/5) was issued by board of doctors of Lal Bahadur Shastri Hospital, Govt. of NCT of Delhi, Khichripur on 24.02.2012. It indicates that the board comprised of four doctors two of whom were ortho-specialists. In the name of evidence to prove the said disability certificate, however, the claimant relied on the evidence of Dr. Sanjay Kumar (PW-3) an eye specialist. The said doctor (PW-3) in his testimony conceded that he was not an orthopedic specialist, his specialization being “eyes”, there being no injury suffered in that part of the body. PW-3 was categorical in admitting that he was unable to tell the basis of calculation of disability that had been certified he having concededly signed the certificate only because he was a member of the board.

10. The above state of evidence clearly shows that Tribunal had not secured proper evidence to reach appropriate conclusion as to the nature of disability suffered by the appellant or its effect on functionality of the claimant to continue to earn his livelihood.

11. Faced with the above fact-situation, the learned counsel for the appellant fairly conceded that the contention of the insurance company on the basis of available record would have to be accepted. He, however, accepted that he may be given one more opportunity to lead appropriate evidence. The counsel for the insurance company submitted that she leaves the matter to the Court.

12. Having regard to the above fact-situation, it would be proper that the claimant is given one more opportunity to prove the extent of disability and its effect on his capacity to earn his livelihood. Thus, the impugned judgment is set aside, the matter is remitted to the

Tribunal for affording additional opportunity to the claimant for further evidence only on the above aspect. Needless to add, the insurance company will be entitled to lead evidence in rebuttal, if any. After such opportunity has been afforded, the Tribunal shall reconsider the question of compensation including respecting the areas concerning which the insurer and the claimant have raised grievances before this Court. While taking fresh decision, the Tribunal will not feel bound by the decision earlier taken by it on any of the heads of damages - pecuniary or non-pecuniary. It must, however, bear in mind the relevant law on the subject.

13. The parties are directed to appear before the tribunal for further proceedings in accordance with law on 4th August, 2017.

14. The tribunal's record shall be returned forthwith with copy of this judgment.

15. By order dated 22.03.2016, the insurance company had been directed to deposit the entire amount in terms of the impugned judgment of the tribunal with interest calculated at 9% per annum with the tribunal within a period of 30 days. Upon such deposit being made, the tribunal was allowed to release 40% of the awarded amount in terms of the impugned judgment, the balance having been kept in an interest bearing fixed deposit initially for a period of one year with provision for renewal from time to time. The said order has since been complied with. The amount already received by the claimant shall be suitably adjusted in terms of the fresh award passed hereinafter by the tribunal. The balance amount shall be presently refunded to the insurance company.

16. The statutory deposit, if made, shall also be refunded.
17. The appeals are disposed of in above terms.

R.K.GAUBA, J.

JULY 04, 2017/nk

