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

Decided on: 19th December, 2017

\+ MAC.APP. 917/2012 and CM APPL.14582/2012

RELIANCE GEN INSURANCE CO LTD ..... Appellant
Through: Mr. Rajeev M. Roy, Adv. with Mr. P. Srinivasan, Advocate

versus

ASHOK KUMAR RAUT & ORS ..... Respondents
Through: Nemo.

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

JUDGMENT (ORAL)

1. On the accident claim case (MACT No.549/2010) of the first respondent (the claimant) instituted on 23.01.2010, the tribunal returned a finding that he (the claimant) had suffered injuries which had rendered him permanently disabled due to motor vehicular accident that took place on 18.09.2009 involving negligent driving of motor vehicle bearing registration No.DL-1M-2843, which was admittedly insured against third party risk for the period in question with the appellant (insurer), and awarded compensation in the total sum of Rs.10,34,550/-, calculating it thus:-

Sl.No.	Head	Amount (in Rs.)
1.	Loss of income	26,262/-
2.	Medical expenses	33,000/-
3.	Loss of future income, etc.	6,30,288/-

4.	Special diet	15,000/-
5.	Conveyance charges	15,000/-
6.	Future treatment medical expenses	15,000/-
7.	Pain, suffering & trauma and	1,50,000/-
8.	Loss of amenities, enjoyment of life, etc.	1,50,000/-
	Total	10,34,550/-

2. The liability to pay was fastened on the insurer with interest @ 9% per annum, with further directions that it would pay Rs.30,000/- as counsel fee to one advocate, Rs.11,000/- as counsel fee to another advocate, besides Rs.5,000/- as out of pocket expenses.

3. The claimant had suffered injuries that included grievous hurt in the nature of fracture of the neck right of the femur bone, fracture of the shaft of the right femur bone, fracture of the right ankle, besides abrasions and blunt injuries all over the body. The claimant underwent several surgical procedures in spite of which he has been rendered permanently disabled, his permanent physical impairment having been evaluated by board of doctors of Hindu Rao Hospital (Ex.PW-2/A) to be to the extent of 22% in relation to the right lower limb on account of aforementioned fractures of the neck and shaft of the right femur bone, besides stiffness of the ankle and shortening of the right lower limb. The tribunal took note of the fact that the claimant was working for gain as a driver and took functional disability to be to the extent of 50% and made calculation of loss of future income accordingly.

4. By the appeal at hand, the insurer takes exception to the assessment of the functional disability and to the directions of payment of counsel fee and out of pocket expenses.

5. Given the above state of the disability, having regard to the nature of avocation from which the claimant was earning his livelihood, this court finds the assessment of the functional disability made by the tribunal to be just and correct. Therefore, there is no case made out for any interference in the award of compensation.

6. However, there being no justification for such inclusion, the directions in the award for payment of lawyer's fee and out of pocket expenses are set aside.

7. By order dated 27.08.2012, the insurer was directed to deposit the entire awarded amount (less counsel's fee and out of pocket expenses) with upto date interest with UCO Bank, Delhi High Court, New Delhi. However, till date no proof of deposit has been filed. Learned counsel for the insurer submits that the account of the insurer has been attached by the tribunal. The tribunal would ensure the award is enforced.

8. The statutory deposit shall be refunded to the insurer only after proof of award having been satisfied is shown.

9. The appeal and the pending application stand disposed of in above terms.

R.K.GAUBA, J.

DECEMBER 19, 2017
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