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

Decided on: 18th July, 2017

+ MAC.APP. 415/2016

SHRI RAM GENERAL INSURANCE CO LTD..... Appellant
Through: Mr. Priyadarsi Acharya, Adv.

versus

IMRAN & ORS

..... Respondents

Through: Mr. Abhinav Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The first respondent was injured in a motor vehicular accident that occurred on 03.08.2012 due to negligent driving of truck bearing registration no.HR-55J-9462 (the truck) by the second respondent. The truck was admittedly owned by the third respondent and concededly insured against third party risk with the appellant insurance company for the period in question. The first respondent (the claimant) instituted accident claim case (MAC No.82/2014) on 26.03.2014 on which, after inquiry, the Motor Accident Claims Tribunal (the tribunal) awarded compensation in the sum of Rs.16,64,562/- with interest @ 12% per annum from the date of filing of the petition till realization, calling upon the insurance company to pay.

2. The insurance company admitting the liability to indemnify has come up by the appeal at hand and questions the computation of compensation on account of loss of earning capacity due to disability and the award of compensation towards future and medical expenses in addition to raising grievance about the rate of interest.

3. The claimant had submitted before the tribunal that he was working as a machine operator (loudspeaker/mike) with a contractor Mohd. Salim. He could not muster evidence about such private employment. The tribunal, therefore, assumed the income on the basis of minimum wages payable to a graduate, proof having been adduced of the claimant having completed the degree course of Bachelor of Arts. The tribunal assessed the functional disability suffered to be to the tune of 66%. It is this finding correctness of which is questioned by the appellant.

4. On perusal of evidence it is found that the claimant had suffered fracture in the left upper limb. This has resulted in loss of range of motion in the left elbow. The claimant was examined by a board of doctors of GTB hospital which issued disability certificate (Ex.PW-1/A) on 23.03.2015. The certificate was proved by Dr. Ankit Chawla (PW-2), who was the member of the said board. As per the said evidence, the medical board found the claimant to have been rendered permanently disabled to the extent of 66% in relation of the left lower limb. The tribunal, accepting the plea that the claimant was working as machine operator in relation to the equipments in the nature of loudspeaker/mike, was of the opinion that he cannot continue doing

the same work on account of restrictions in the movement of elbow and thus assessed the functional disability as 66%.

5. In the opinion of this Court, this finding cannot be accepted. Loudspeakers/mikes are not such equipments as would require constant motion of elbow so as to assume the physical medical disability to be equivalent to the functional disability. Noticeably, even the plea that the claimant was working as machine operator for such equipment was not strictly proved. Having regard to the facts and circumstances, the functional disability cannot be more than 20%. The loss of future earning capacity, thus, has to be calculated accordingly.

6. The claimant was born on 10.06.1989 and, thus, was about 23 years of age when the accident occurred. The future loss of income on account of disability has to be calculated with the multiplier of 18. Since there is no proof of regular income or employment, there is no occasion for addition of element of future prospects. Thus, the loss of future income is computed as $(9282/- \times 20/100 \times 12 \times 18)$ Rs.4,00,982.4 rounded off to Rs.4,01,000/-.

7. In view of the injuries suffered and their lasting effect, the grievance as to the award of Rs.10,000/- towards future medical expenses cannot be accepted. Thus, adding the other components of compensation, as awarded by the tribunal, the total compensation comes to $(9564/- + 4,01,000/- + 74,256/-, 10,000/- + 17,500/-, + 20,000/- + 1,00,000/- + 50,000/- + 60,000/-)$ Rs.7,42,320/- rounded off to Rs.7,43,000/-.

8. Following the consistent view taken by this Court [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*], the rate of interest is reduced to 9% per annum from the date of filing of the petition till realization.

9. By order dated 18.05.2016, the insurance company had been directed to deposit entire awarded amount with upto date interest out of which 50% was allowed to be released and the balance was kept in fixed deposit receipt.

10. The tribunal shall release the balance in terms of the modified award, refunding the excess deposited by the insurance company.

11. Appeal is allowed in above terms.

12. The statutory amount, if deposited, shall also be refunded to the appellant insurance company.

JULY 18, 2017

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R.K.GAUBA, J.