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

Decided on: 25th August, 2017

\+ MAC.APP. 461/2016 and CM 21302/2016

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

versus

SARNAM SINGH & ORS ..... Respondents
Through: Mr. Neeraj P. Singh, Adv. for R-1

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

JUDGMENT (ORAL)

1. The first respondent, then aged 50 years and 5 months, employed with Bharat Hotels Ltd. as senior assistant, suffered injuries in a motor vehicular accident that occurred on 24.11.2013 involving negligent driving of a tempo bearing registration no.UP-79T-1948, admittedly insured against third party risk with the appellant / insurance company (insurer), for the period in question. The injuries left him permanently disabled, in that his right lower limb above knee had to be amputated. He instituted accident claim case (suit no.45/14) on 25.02.2014 seeking compensation and, in the course of the inquiry that followed, it came to be proved through a disability certificate dated 22.01.2016 issued by a board of doctors of Pt. Madan Mohan Malaviya Hospital of the Govt. of NCT of Delhi, that his permanent disability is 85% in relation to the said lower limb.

2. The Motor Accident Claims Tribunal (Tribunal) awarded compensation in the total sum of Rs.33,34,800/-, by judgment dated 18.04.2016 fastening the liability on the insurance company (appellant) to pay the same with interest at the rate of 9% p.a., the said amount inclusive of Rs.30,84,800/- towards loss of future income, this on the basis of assumption that the functional disability would be 100%.

3. The insurer has come up in appeal questioning the computation of loss of future income on such basis. It is the contention of the insurer that the disability has been over assessed.

4. The reasons set out by the tribunal in the impugned judgment to assume the functional disability to the extent of 100% cannot be accepted. The fact remains that the claimant had continued to be in the same job for two years where-after his services were terminated. In an identically placed case - *National Insurance Company Ltd. Vs. Priti Gupta and Ors., MACA 1068/2016*, decided by this court on 24.08.2017, the functional disability of the claimant of the said case, who had also suffered amputation of one of the lower limbs to the same extent, was assessed as 80%. The functional disability of the claimant is assessed on same lines.

5. It is noted that the tribunal did not take into account the last emoluments drawn by him at Rs.20,774/-, deducting Rs.800/- as transport allowance to derive the net income of Rs.19,974/- p.m. The allowance in question was a regular perk which would result in corresponding savings and, therefore, cannot be kept out.

6. The loss of future income due to functional disability to the extent of 80% is, thus, recomputed with the multiplier of 13, as applied by the tribunal on the basis of income including above allowance at (Rs.20,774/- x 80/100 x 12 x 13) Rs.25,92,595/-. This would mean the compensation, as awarded by the tribunal, has to be reduced by [Rs.30,84,800/- (-) 25,92,595/-] Rs.4,92,205/-.

7. The compensation is thus reduced to [Rs.33,34,800/- (-) Rs.4,92,205/-] Rs.28,42,595/-, rounded off to Rs.28,43,000/-. The award is modified accordingly. Needless to add, it shall carry interest as levied by the tribunal.

8. By order dated 30.05.2016, the insurance company had been directed to deposit the entire awarded amount with interest and out of such deposit, thirty percent (30%) was allowed to be released. The tribunal shall now calculate the amount payable to the claimant in terms of the modified award, releasing the balance to him, refunding the excess in deposit to the insurance company.

9. The statutory amount shall be refunded.

10. The appeal and the pending application are disposed of in above terms.

R.K.GAUBA, J.

AUGUST 25, 2017

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