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

Decided on: 22nd August, 2017

+ **MAC APPEAL No. 545/2009**

ICICI LOMBARD GENERAL INSURANCE CO. LTD.

... Appellants

Through: Mr. Pankaj Gupta for Ms.
Suman Bagga, Adv.

versus

SHRI RAKESH KUMAR

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The first respondent (since deceased) had suffered injuries in a motor vehicular accident that occurred on 03.07.2007 due to negligent driving of motor vehicular described as Eicher Tempo bearing registration no. DL 1LG 1357 and was rendered permanently disabled, his right leg above knee having been amputated, the disability having been evaluated (Ex.PA) to be to the extent of 80% in relation to the right lower limb. On his claim petition (petition no. 420/2008), instituted on 16.08.2007, the tribunal held inquiry and, by judgment dated 02.07.2009, awarded compensation in the sum of Rs. 14,07,000/-, fastening the liability on the insurance company (the appellant) of the offending vehicle, it being called upon to pay the same with interest @ 7.5 % per annum, the said amount inclusive of

Rs. 8,42,400/- calculated towards loss of earning capacity due to functional disability at 60%, the income having been found by the tribunal to be Rs. 6,000/- per month, the multiplier of 13 having been correctly applied.

2. The insurance company challenges the award on the ground that the evidence of Raj Kumar Jain (PW-2) about the income should not have been accepted and that the award towards loss of earning capacity, therefore, requires reduction. It also questions the addition of Rs. 2 lakhs towards pain & sufferings.

3. Having heard the learned counsel for the appellant and having gone through the tribunal's record, this Court finds no good case for interference with the view taken by the tribunal. The tribunal has given valid reasons for accepting the evidence of PW-2 to conclude that the income of the claimant was Rs. 6,000/- per month. Noticeably, he was engaged in the work of tailoring under the proprietary firm of PW-2. Given the fact that the claimant had suffered amputation of his right lower limb, the loss of earning capacity has been correctly computed, the award under the head of pain & suffering not being excessive.

4. The appeal is dismissed.

5. It is noted that the claimant had died on 19.05.2010, during the pendency of the appeal at hand. His legal heirs have been substituted by order dated 06.10.2010. The amount awarded by the tribunal was deposited by the insurance company in terms of earlier orders and part

thereof has been released to the legal heirs. The balance shall now be released.

6. The statutory deposit shall be refunded.

R.K.GAUBA, J.

AUGUST 22, 2017

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