$~R-261

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

Decided on: 22nd September, 2017

\+ MAC APPEAL 764/2010

NATIONAL INSURANCE COMPANY LTD. ..... Appellant
Through: Mr. Manoj R. Sinha, Advocate

versus

AMISH MANGLA & ORS. ..... Respondents
Through: None

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

JUDGMENT (ORAL)

1. The first respondent (claimant), then aged 24 years, a qualified Mechanical Engineer working with M/s. Wartsila India Ltd, suffered injuries in a motor vehicular accident that occurred on 21.08.2012 due to the negligent driving of a truck bearing no.PAT-5271 admittedly insured against third party risk with the appellant / insurance company (insurer). The injuries suffered rendered him permanently disabled, the disability certificate (Ex. PW1/4) issued by board of doctors of Lok Nayak Jai Prakash Narayan Hospital, Govt. of NCT of Delhi affirming it to be on account of degloving injury to the right shoulder and scapular region, the impairment being 40% (forty percent) in relation to the right upper limb. On his accident claim case (MACT 210/2008) instituted on 05.07.2003, the Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 21.05.2010,

awarded compensation in the total sum of Rs.11,66,000/- directing the insurer to pay with interest at the rate of 9% p.a. calculating it thus :-

Medicine & Treatment	Nil
Loss of income	Rs.81,000/-
Loss of earning power	Rs.8,80,000/-
Loss of amenities / marriage prospects	Rs.1,00,000/-
Pain and suffering	Rs.75,000/-
Conveyance and special diet	Rs.30,000/-

2. The insurer, by the appeal at hand, questions the awards under the heads of loss of income and loss of earning power. It is the argument of the insurer that both the awards overlap. It is also the contention of the insurer that the claimant had left the job in which he was engaged at the relevant point of time since he wanted to pursue higher studies. It is submitted that the calculation of the loss of earning capacity due to disability, evaluated at 25%, with notional income arrived at after the element of future prospects of increase factored in was improper.

3. A perusal of the tribunal's record and the reasoning set out by the tribunal in the impugned judgment shows that the view taken by the tribunal in the impugned judgment cannot be faulted. There is no overlap. The amount of Rs.81,000/- for loss of income was for the period of six months that the claimant had to remain on leave of absence from duty. The loss of earning power as included in the award is actually the loss of future income due to disability. Having regard to the educational qualifications of the claimant, and his pursuit of MBA from IIT, Delhi for which reason he left the job, the element

of future prospects of increase in income factored in cannot be grudged. The appeal, therefore, is devoid of substance and is dismissed.

4. By order dated 25.11.2010, the insurer had been directed to deposit the entire awarded amount with the Registrar General of this court and out of such deposit, fifty percent (50%) was allowed to be released to the claimant. The balance shall now be released to the claimant in terms of the impugned judgment. The statutory deposit shall be refunded to the insurance company.

5. The appeal is disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 22, 2017
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