$~11 & 26 *(common order)*

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

Decided on: 9th August, 2017

\+ MAC.APP. 354/2017 and CM APPL.13688/2017 (stay),
CM APPL.18563/2017 (for release of amount)

IFFCO TOKIO GENERAL INSURANCE CO LTD...Appellant
Through: Mr. Pankaj Gupta, Advocate for Ms. Suman Bagga, Advocate

versus

AALAM @ M SHAMSHAD ALAM & ORS .... Respondents
Through: Ms. Sharaddha Bhargava, Advocate for R-1.
Mr. Prabhu Dayal Shukla, Adv. for R-2 & R-3.

\+ MAC.APP. 704/2017

AALAM @ M SHAMSHAD ALAM ..... Appellant
Through: Ms. Sharaddha Bhargava, Advocate

versus

BRIJESH SHUKLA @ MANOJ & ORS (IFFCO TOKIO GENERAL INSURANCE CO LTD) ..... Respondent
Through: Mr. Pankaj Gupta, Advocate for Ms. Suman Bagga, Advocate for R-3.

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

JUDGMENT (ORAL)

1. Aalam @ M. Shamshad Alam, the appellant (in MAC APP.704/2017), then 47 years old, employed as Clerk (Operation) with M/s. Patel Roadways Limited, suffered injuries in a motor

vehicular accident that occurred on 19.05.2014 statedly due to rash driving of motor vehicle bearing registration No.DL-1LR-0709, admittedly insured against third party risk with IFFCO Tokio General Insurance Company Limited (appellant in MAC APP.354/2017) for the period in question and was rendered permanently disabled due to amputation affecting his right lower limb.

2. The Motor Accident Claims Tribunal (the tribunal) held inquiry and thereafter, by judgment dated 05.01.2017, upheld the claim on the principle of fault liability and awarded compensation in the sum of Rs.26,76,922/-, fastening the liability on the insurance company, rejecting its plea of the claimant being a gratuitous passenger to seek exoneration.

3. Both the claimant and insurer are in appeal to assail the impugned judgment of the tribunal.

4. It is noted that the tribunal accepted the evidence showing medical opinion regarding permanent disability to be to the extent of sixty per cent (60%) in relation to right lower limb and on that basis awarded compensation for loss of future earnings due to disability taking the functional disability to be to the extent of fifty per cent (50%). While the claimant pleads that he was engaged in field duties, the loss of part of right lower limb has rendered him permanently disabled, his functional disability should have been assessed more. It is the contention of the insurer in appeal that there was no evidence led about the nature of duties involving field work and since the appointment was of Clerk (Operation), the functional disability should

have been only to the extent of twenty five per cent (25%). It is noted that though it is pleaded that the claimant had suffered amputation in the second surgical procedure to the extent of right leg below knee, there is no clear documentary proof adduced to that effect, the disability certificate only giving an opinion about the extent of disability and not the reasons for such assessment. While awarding compensation, the tribunal has also added Rs.9,00,000/- towards procurement of artificial limb. Some evidence indicating estimate for prosthetic limb to be procured was adduced but it is noted that such estimate referred to artificial foot and not an artificial leg below knee.

5. The learned counsel for the claimant, after some hearing, submitted, on instructions, that she concedes to the impugned judgment of the tribunal in so far as it computed the compensation to be set aside but requested that the matter may be remanded for such purposes to the tribunal so that the claimant can lead further evidence.

6. In view of the above, the impugned judgment of the tribunal is set aside. The claim case is remanded for further inquiry to the tribunal. During further inquiry, the claimant will be given opportunity to lead further evidence having a bearing on the computation of compensation. After such additional opportunity has been availed, contesting respondents will also be entitled to lead evidence in rebuttal, if any.

7. All contentions of the parties are kept open to be adjudicated afresh.

8. The amount deposited by the appellant insurance company in terms of order dated 12.04.2017 (in MAC APP.354/2017) shall be presently refunded along with statutory deposit made.

9. The parties shall appear before the tribunal for further proceedings on 8th September, 2017.

10. Given the nature of claim, it is expected that the tribunal will hold expeditious proceedings and render its fresh judgment at an early date, preferably within six months from the date of first appearance of the parties, this, of course, being contingent upon the expedition to be shown by the claimant in adducing additional evidence.

11. Both the appeals with pending applications stand disposed of in above terms.

12. *Dasti.*

R.K.GAUBA, J.

AUGUST 09, 2017
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