$~R-280

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

Decided on: 27th September, 2017

\+ MAC.APP.871/2010

ORIENTAL INSURANCE CO. LTD. ..... Appellant
Through: Ms. Neerja Sachdeva, Advocate

versus

MAKHAN SINGH & ORS ..... Respondents
Through: None

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

JUDGMENT (ORAL)

1. The first respondent, then aged 42 years, earning his livelihood as a rickshaw puller suffered grievous injuries in a motor vehicular accident that occurred on 03.02.2007 on account of the negligent driving of a motorcycle bearing registration no.DL-8S-AA-3676 by the second respondent, it being a vehicle registered in the name of the third respondent and admittedly insured against third party risk with the appellant / insurance company for the period in question. On his accident claim case (MACT 161/10/07) instituted on 13.07.2007, the Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 12.10.2010, awarded total compensation in the sum of Rs.5,98,855/- directing the insurer to pay with interest, calculating it thus :-

Loss of Income	Rs.3,93,498/-
Medical Expenses	Rs.357/-
Future treatment, pain and sufferings etc.	Rs.2,00,000/-
Special Diet & conveyance charges	Rs.5,000/-
	Rs.5,98,855/-

2. The insurer by the appeal at hand submits that the loss of income due to the functional disability has been wrongly calculated as the element of future prospects of increase in income was improperly added against the assessment of the income notionally with the help of minimum wages (Rs.3,470/- p.m.).

3. While the contention of the insurer in this regard may be technically correct, it is noted that the award granted by the tribunal is deficient. It is not properly structured for the reason the loss of income for the period of treatment was not calculated and there is no separate award granted for loss of amenities of life. It is noted that the injuries suffered by the claimant included fracture of the pelvic bone. It is on this account that he has been rendered permanently disabled, in spite of the surgical procedures undergone, his permanent disability having been treated as 45% by the board of doctors of Sanjay Gandhi Memorial Hospital, Govt. of NCT of Delhi vide disability certificate (Ex. PW1/1) dated 05.02.2010, the reasons having been elaborated in the said document as post traumatic stiffening of the right hip. Even if the element of future prospects of increase in income were to be kept out of consideration in calculating the consequent loss of future income due to disability upon the deficiency

in the award towards loss of income during treatment and for loss of amenities of life being taken care of, the total amount of compensation awarded by the tribunal would call for no interference.

4. Thus, the appeal is dismissed.

5. By order dated 20.12.2010, the insurance company had been directed to deposit the entire awarded amount with the Registrar General and from 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.

6. The statutory deposit shall be refunded to the insurance company.

R.K.GAUBA, J.

SEPTEMBER 27, 2017
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