$~R-279

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

***Decided on: 27th September, 2017***

\+ MAC APPEAL NO.861/2010

UNITED INDIA INSURANCE COMPANY LIMITD ……Appellant

Through: Mr. Sameer Nandwani, Advocate

Versus

ZILE SINGH & ORS. ..... Respondents

Through: Mr. Anshuman Bal, Advocate for R-1.

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

**JUDGMENT (ORAL)**

1. The first respondent (the claimant) had instituted accident claim case (Suit No.533/2008) on 29.04.2008, *inter alia,* against the appellant insurance company (insurer) on the averments that on 12.03.2008 while boarding the bus bearing registration No.DL-1P-2052 (the bus) at about 5:30 p.m., he had suffered injuries as the driver of the bus (second respondent) had started it with a jerk making him lose balance and consequently falling on the road getting crushed under the wheels of the bus. The bus, admittedly belonged to Delhi Transport Corporation (DTC), the third respondent, and was concededly insured against third party risk for the period in question with the appellant.

2. The tribunal held inquiry and, by judgment dated 31.08.2010, upheld the case for compensation holding the bus driver responsible for the mishap. It awarded compensation in the sum of Rs.8,13,467/- and directed the insurer to pay the same to the claimant with interest @ 7.5% per annum, the said amount inclusive of Rs.6,07,947/- calculated towards loss of earning capacity, this on the basis of finding that the claimant has been rendered permanently disabled, his functional disability having been assessed to the extent of 35% and, for such purposes, the multiplier of 9 having been applied, taking into fact that the claimant on the relevant date was 57 years old.

3. The insurer, by the appeal at hand, questions the above mentioned award on the grounds that the claimant being an employee of DTC, could have claimed compensation under Employees' Compensation Act, 1923 and that since he has instead chosen to claim the same under the Motor Vehicles Act, 1988, the calculation of compensation will still have to be made in terms of dispensation under Employees' Compensation Act, 1923. It is submitted that there was no actual loss of earnings as the evidence showed that the claimant had continued to be in the employment of DTC notwithstanding the disability suffered. It is also submitted that the medical expenses were wrongly included in the award in the sum of Rs.35,520/- since the same were reimbursable by the employer.

4. To say the least, all the three above mentioned contentions are found to be unfair and unjust. The claimant had shown by positive evidence the medical expenditure incurred. It was his wish to have it included in the award of compensation rather than claim it by way of

reimbursement. The possibility of reimbursement does not mean the insurer may seek discount on such basis. As pointed out by the counsel on the other side, the claimant was not boarding the bus in the course of his employment with DTC or for discharge of his official duty in such employment. He was boarding it as an ordinary citizen to undertake the journey on the route on which the bus was plying. Therefore, the reference to Employees' Compensation Act, 1923 is improper.

5. Even if the fact of the claimant having continued in the same employment, despite disability suffered, till the age of 60 years were to be accepted, the loss of future income due to disability at the age of 60 years would require to be computed with the multiplier of 9 only. Thus, the above consideration will not have any effect on the computation of compensation.

6. The appeal is found wholly devoid of substance and is dismissed with costs of Rs.25,000/- to be paid in favour of Delhi High Court Legal Services Committee. For this, the statutory deposit shall stand forfeited to be made over to the said authority.

7. By order dated 20.12.2010, the insurance company had been directed to deposit the awarded amount with interest. By subsequent order dated 18.05.2011, fifty per cent (50%) was allowed to be released to the claimant. The registry shall now release the balance to the claimant from the amount which was retained in fixed deposit in terms of the impugned judgment.

8. The appeal stands disposed of in above terms.

**R.K.GAUBA, J.**

**SEPTEMBER 27, 2017**
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