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

Decided on: 4th September, 2017

\+ MAC APPEAL No. 647/2016

BHARTI AXA GEN. INS. CO. LTD. ..... Appellant
Through: Mohd. Mustafa, Adv.

versus

RAM SINGH ..... Respondent
Through: Mr. S.N. Parashar, Adv. with respondent in person.

\+ MAC APPEAL No. 1073/2016

RAM SINGH ..... Appellant
Through: Mr. S.N. Parashar, Adv. with appellant in person.

versus

BHARTI AXA GEN. INS. CO. LTD. ..... Respondent
Through: Mohd. Mustafa, Adv.

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

JUDGMENT (ORAL)

1. Ram Singh (first respondent in MAC Appeal No. 647/2016 and appellant in cross appeal MAC Appeal No.1073/2016), statedly earning his livelihood as a cook, then aged about 49 years, suffered injuries in motor vehicular accident that occurred on 28.12.2013 at

about 8.40 p.m. in front of Hotel Lalit, ahead of Sarai Toll Tax, Delhi Faridabad road due to negligent driving of truck trolla bearing registration no. HR 38L 5725, admittedly insured against third party risk with Bharti Axa General Insurance Company Ltd. (appellant in MAC appeal no. 647/2016 and first respondent in MAC Appeal No. 1073/2016). He instituted accident claim case (petition no. 91/2014) on 25.03.2014 seeking compensation pleading that he had been rendered permanently disabled, both his lower limbs having been amputated, his disability as per the opinion (Ex.PW1/3) of a board of doctors of Pandit Madan Mohan Malviya hospital being to the extent of 88 % in relation to the said lower limbs.

2. The tribunal, after inquiry, by judgment dated 21.04.2016, upheld the claim for compensation on the basis of finding that the said vehicle was driven negligently by its driver Suresh Kumar (a respondent in these appeals), the vehicle being registered in the name of M/s Saru Frieght Corporation (another respondent in these appeals) and being insured against third party risk with the aforementioned insurance company. The finding on the issue of negligence has attained finality as it was not challenged by any of the affected parties.

3. The tribunal awarded compensation in the total sum of Rs. 21,12,300/-, which includes loss of future income and Rs. 32,300/- towards medical expenses. The future income loss has been computed on the basis of functional disability and the non- pecuniary awards of damages under the heads of pain & suffering, enjoyment of life have been added.

4. The insurance company has come up in appeal questioning the computation of loss of future earnings due to disability on the ground that the evidence about the income at Rs. 10,000/- per month should not have been accepted merely on the oral word of the claimant who appeared as his own witness (PW-1). The claimant, on the other hand, by his appeal, submits that the compensation awarded is grossly inadequate, the fact that the treatment is continuing and further that his right upper limb is also affected, it having been fractured on account of crush injuries suffered, temporarily repaired with the help of a fixator, the fact that it requires further surgical procedure having not been borne in mind.

5. During the course of hearing, however, it was brought out that while assessing the permanent disability, the board of doctors of Pandit Madan Mohan Malviya Hospital of the Govt. of NCT of Delhi, issuing disability certificate on 25.11.2014 (Ex.PW-1/3) has not even considered the evaluation of the injury to the right upper limb. Against the above backdrop, the learned counsel for the claimant, on instructions, submitted that the matter would require further inquiry in the course of which further medical opinion would need to be obtained, the injuries suffered and the effect thereto having not yet stabilized. The counsel, thus, submitted that the impugned judgment may be set aside and for the matter may be remitted to the tribunal for further inquiry and fresh assessment of the compensation, taking into account all the necessary elements. On being asked, the counsel for the insurer responded by submitting that he leaves the matter to the discretion of the Court.

6. In the foregoing facts and circumstances, the request of the claimant appears to be proper deserving to be accepted. At the same time, the request for some arrangement to be made such that the claimant is not deprived of the basic source of sustenance during the course of further inquiry will also have to be borne in mind.

7. In view of the above, the impugned judgment is set aside. The matter is remitted to the tribunal for further inquiry. During the proceedings which are consequently to recommence before the tribunal, it shall make arrangement for full and proper evaluation to be made of the state of handicap suffered by the claimant in the aforementioned accident which needless to add, would also include the evaluation of the injury to the right upper limb. The claimant will be granted opportunity to lead further evidence followed by similar opportunity to lead evidence in rebuttal being given to the parties that contest.

8. The parties shall appear before the tribunal for further proceedings on 16th October, 2017.

9. By order dated 22.08.2016 in MAC Appeal no. 647/2016, the insurance company had been directed to deposit the awarded amount with upto date interest with UCO Bank Delhi High Court Branch, where it was directed to be kept in fixed deposit for the period specified. By subsequent order dated 08.09.2016, while retaining Rs. 25,00,000/- in eleven fixed deposit receipts for different periods, the balance was allowed to be released to the claimant by transferring it into his saving banks account. Having regard to the afore-mentioned condition of the claimant, it is directed that he shall be entitled to

periodic interest against the amounts which have been kept in fixed deposits receipts for his sustenance till the tribunal takes a fresh decision in the matter. On conclusion of further inquiry, the tribunal will not only grant appropriate award of compensation but also issue necessary directions with regard to the amounts kept in fixed deposit receipts in terms of these directions.

10. The appeals are disposed of in above terms.

11. The statutory amount deposited by the insurer in its appeal shall be refunded.

R.K.GAUBA, J.

SEPTEMBER 04, 2017
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