$~R-695

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

Decided on: 12th December, 2017

\+ MAC APPEAL 1286/2012

IFFCO TOKIO GENERAL INSURANCE COMPANY LTD. ..... Appellant

Through: Ms. Shantha Devi Raman and Mr. Arihant Jain, Advocates

versus

LT. COL. RENU KUMARI & ORS. ..... Respondents

Through: Ms. Nitika Bhutani, Adv. for R-1

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

<u>JUDGMENT (ORAL)</u>

1. The first respondent (claimant) had instituted the accident claim case (case no.622/2011) before the Motor Accident Claims Tribunal (Tribunal) on 25.08.2011 seeking compensation under Section 166 of the Motor Vehicles Act, 1988 for the injuries sustained and consequent disability suffered due to a motor vehicular accident that had occurred on 29.06.2011 on account of negligent driving of a car bearing registration no.HR-26BE-2510 by the second respondent (driver), the car being registered in the name of the third respondent (owner) and admittedly insured against third party risk with the appellant (insurer).

2. The tribunal held inquiry and by judgment dated 04.10.2012, accepted the said claim case and found that the claimant had suffered permanent physical disability, her functional disability being taken as 15% and awarded compensation in the total sum of Rs.16,18,865/-, it having been calculated thus :

Treatment expenses	Nil
Pain and sufferings	Rs.25,000/-
Conveyance & special diet	Rs.10,000/-
Compensation on account of disability	Rs.14,53,865/-
Loss of enjoyment of life and amenities of life	Rs.50,000/-
Loss of promotional avenues	Rs.50,000/-
Compensation on account of loss of leave	Rs.30,000/-
Total	16,18,865/-

3. The liability to pay the above mentioned amount with interest was fastened on the insurer. The insurer questions the award by the appeal at hand and presses it on the ground that there was no actual loss of income since the claimant, a serving officer of Indian Army, had continued to be employed and, therefore, the invocation of the multiplier of 13 as per the age of the claimant (born on 29.09.1960) on the date of the accident was inappropriate. The insurer also raises the issue of extent of functional disability.

4. During the pendency of appeal in terms of order dated 03.04.2014, the claimant was referred for fresh evaluation by a board of doctors directed to be constituted by Army Hospital (RR), Delhi Cantt. Pursuant to the said directions, a medical board was constituted, which gave its opinion on 17.05.2014 to the effect that the

condition of the claimant had improved and that her disability would now work out to 13.5%. On the basis of such evaluation, the insurer argues the functional disability should be taken as about 7%.

5. *Per contra*, the claimant argues through counsel that she had suffered loss of promotional avenues due to the disability suffered, given the strenuous conditions of service in Army and consequently, the loss of income arising from the physical impairment has not been properly computed.

6. After some arguments, it was submitted by the counsel for the claimant that for appropriate evaluation of the condition and its effect on the earning capacity, the claimant would need to bring in additional evidence particularly because, as per the instructions now received, she has been constrained to take voluntary retirement from Army service.

7. In the given facts and circumstances, this court also finds that the matter requires further evidence in as much as there is nothing on record to assist in computing the actual loss to the claimant emanating from delayed promotion due to the disability suffered, the scrutiny also requiring the facts concerning the effect of voluntary retirement to be borne in mind.

8. For the foregoing reasons, the impugned judgment to the extent compensation was thereby awarded in favour of the first respondent (claimant) is set aside and the matter remanded to the tribunal for further inquiry. In such further inquiry, the claimant will be entitled to lead additional evidence which will be followed by similar

opportunity to be given to the parties that contest to lead evidence in rebuttal, if any.

9. By order dated 17.12.2012, the insurance company had been directed to deposit 50% of the awarded amount with up-to-date proportionate interest with the tribunal and from out of such deposit, Rs.3,00,000/- was permitted to be released to the claimant. The balance lying in deposit with corresponding interest shall be refunded presently to the insurance company. The amount already paid to the claimant will be liable to be adjusted against the fresh adjudication.

10. Given the old pendency, the tribunal is requested to hold expeditious proceedings and decide the case afresh at an early date. The parties are directed to appear before the tribunal on 15.02.2018.

11. The statutory amount shall be refunded to the insurance company.

12. The appeal is disposed of in above terms.

R.K.GAUBA, J.

DECEMBER 12, 2017
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