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

Decided on: 12th September, 2017

+ MAC.APP. 750/2016

IFFCO TOKIO GENERAL INSURANCE CO LTD

..... Appellant

Through: Ms. Harsh Lata, Advocate for
Ms. Shantha Devi Raman,
Advocate

versus

RAKESH KOHLI & ORS

..... Respondents

Through: Mr. S.N. Parashar, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The first respondent (claimant) was riding on motorcycle bearing registration No.DL-10SA-9036 with his brother Govind from Bawana to Rohini on 13.05.2011 when, in the area of police picket close to Khera Khurd Canal, it was involved in a collision with car make Hyundai bearing registration No.DL-8CN-6016 (the car), coming from the opposite direction. As a result of the collision he fell down and suffered injuries. Accident claim case (Suit No.260/2011) was instituted by him to seek compensation under Section 166 of the Motor Vehicles Act, 1988 on 21.09.2011, in which driver, owner and insurer of the car respectively were impleaded as party respondents, the last (insurer) now being the appellant before this court, the said

driver and owner of the car having been shown in the array of appeal as second and third respondents. The Tribunal held inquiry and on the basis of evidence led, by judgment dated 19.05.2016, upheld the claim for compensation on the principle of fault liability holding the car driver responsible for the accident. It awarded compensation in the total sum of Rs.10,22,000/- (rounded off figure), calculating it thus:-

Sl.No.	Head	Amount in (Rs.)
1.	Medical expenses	8,331/-
2.	Loss of earnings during treatment	38,532/-
3.	Loss of future earnings	6,55,044/-
4.	Special diet	25,000/-
5.	Conveyance	25,000/-
6.	Pain and suffering	1,00,000/-
7.	Loss of enjoyment of life	1,50,000/-
8.	Cost of proceedings	20,000/-
	Total	10,21,907/-

2. The liability to pay the said amount of compensation has been fastened by the tribunal on the insurer with interest @ nine per cent (9%) per annum.

3. The insurer, by the appeal at hand, has argued that the claimant was guilty of contributory negligence in as much as the evidence would show that the accident had occurred when both the vehicles colliding head-on. This plea must be rejected for the simple reason that there cannot be a thumb rule that in case of two vehicles colliding head-on, the driver of each is responsible for contributory negligence.

In order to bring home the case of contributory negligence, the evidence must show that there was culpable omission in taking proper care also on the part of the driver who alleges the other person to be responsible. In the present case, during the cross-examination of the claimant, who appeared as PW-1 there was not even a remote suggestion given to him that his motorcycle was moving in the wrong lane. In these circumstances, the plea must be rejected.

4. The next contention urged by the insurer is that though the claimant had proved that he had suffered multiple fractures including fracture in the spinal column, his disability as certified by the board of doctors (Ex.PW-1/4), of Dr. Baba Saheb Ambedkar Hospital of Govt. of NCT of Delhi, could not have been treated as equivalent to functional disability. Reliance is placed on the decision of the Supreme Court in *Raj Kumar vs. Ajay Kumar & Anr.*, (2011) 1 SCC 343, the grievance being that the tribunal has not taken into consideration the nature of avocation so as to reach the conclusion that the claimant had suffered functional disability to the extent of fifty per cent (50%), same as the medical opinion about the disability in relation to the upper and lower limbs.

5. The argument to above effect is wholly misplaced and indicates the insurer has not properly appreciated the reasons set out by the tribunal in the impugned judgment. Though it must be conceded that the articulation by the tribunal on this aspect could and should have been more elaborate, it cannot be ignored that the disability certificate shows the claimant is a case of “*cervical spine injury with left side*

hemiparesis” the disability being 50% permanent in relation to the both upper and lower limbs. With paralysis of half side of the body, keeping in view the nature of avocation (supervisor in a factory where he was employed at the relevant point of time), the assessment of the tribunal that functional disability was 50% appears to be fair and, therefore, does not call for any interference.

6. The tribunal has added Rs.20,000/- as costs of proceedings within its judicial discretion. Reliance on decision of this Court in *ICICI Lombard General Insurance Company Limited vs. Kanti Devi & Ors.*, MAC APP.645/2012, decided on 30.07.2012 concerning “counsel fee” is misplaced.

7. The appeal is, thus, dismissed with costs of Rs.25,000/-. The statutory amount deposited by the appellant insurance company shall stand forfeited as costs to be remitted to the Delhi High Court Legal Services Committee as costs awarded in its favour.

8. The insurer had been directed by order dated 14.09.2016 to deposit the entire awarded amount with interest with the UCO Bank, Delhi High Court and out of such deposit fifty per cent (50%) was allowed to be released to the claimant in terms of order dated 19.04.2017. The balance kept in fixed deposit shall also now be released to the claimant in terms of the impugned judgment.

9. The appeal stands disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 12, 2017/vk