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

Decided on: 11th September, 2017

\+ MAC.APP. 730/2016

RELIANCE GENERAL INSURANCE CO. LTD .... Appellant
Through: Mr. Rajeev M. Roy and Mr. P. Srinivasan, Advocates

versus

RAJU CHETTRI & ORS ..... Respondents
Through: Mr. Brajesh Kumar, Mr. Ritik Malik and Mr.D. Pal, Advocates

\+ MAC.APP. 734/2016

RAJU CHETTRI ..... Appellant
Through: Mr. Brajesh Kumar, Mr. Ritik Malik and Mr.D. Pal, Advocates

versus

M/S CHHAVI TOURISTS PVT LTD & ORS ..... Respondents
Through: Mr. S.N. Parasher and Ms. Pankaj Kumari, Advocates for R-1
Mr. Rajeev M. Roy and Mr. P. Srinivasan, Advocates for R-2

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

JUDGMENT (ORAL)

1. Raju Chettri, appellant in MACA 734/2016 (claimant), suffered injuries in a motor vehicular accident that occurred on 11.06.2009 at about 03.45 a.m. statedly due to the negligent driving of a Tata Indica car bearing registration no.UP-16T-2542 resulting in it colliding against a truck bearing registration no.HR-38G-0545, the car admittedly insured against third party risk for the period in question with Reliance General Insurance Company Ltd., appellant in MACA 730/2016 (insurer). He instituted accident claim case (suit no.192/2014 – old no.532/2009) on 24.11.2010.

2. The Motor Accident Claims Tribunal (Tribunal) held inquiry and accepted the claim of injuries having been suffered by the claimant due to the negligent driving of the car. The compensation in the total sum of Rs.14,45,000/- was awarded and liability was fastened on the insurer to pay the same with interest at the rate of 9% p.a.

3. Noticeably, in the course of evidence, the claimant had proved two disability certificates, one dated 28.01.2010 (Ex. PW1/15) issued by the board of doctors of Jai Prakash Narayan Apex Trauma Centre of All India Institute of Medical Sciences (AIIMS) to the effect that the claimant has been rendered physically handicapped, his disability being 92% physical impairment in relation to the left upper limb and the second dated 09.10.2009 (Ex. PW1/14) issued by the board of doctors of Dr. Rajendra Prasad Centre for Ophthalmic Sciences, AllMS stating that he is visually handicapped to the extent of 30% (thirty percent) on account of traumatic optic nerve. The tribunal took note of the evidence to this effect, as also the other evidence, that though the claimant had continued to work with the same employer

for certain period and had joined another job also, he had resigned in September 2013. It concluded that the permanent disability had not affected his earning capacity. It is on this basis that the tribunal held that there was no functional disability. Yet, while not awarding any amount of compensation for loss of earning capacity, the tribunal added Rs.5,00,000/- towards loss of amenities and expectancy of life.

4. The insurer is in appeal questioning the amount of compensation awarded under various heads as also seeking recovery rights on the plea that there was breach of the terms and conditions of the insurance policy.

5. The claimant is in appeal seeking enhancement of the compensation on the ground that the disability has not been properly appreciated referring in this context not only to the two above mentioned disability certificates but also the consequent fall out in the nature of major depressive and post traumatic stress disorder, respecting which he had led further evidence by examining Dr. Achal Bhagat (PW-2).

6. Having heard the learned counsel on both sides and having perused the record, this court is of the opinion that the tribunal has not dealt with the issue of the claim of functional disability properly or comprehensively. In these circumstances, as is now prayed on behalf of the claimant, the impugned judgment is set aside and the matter is remitted to the tribunal for fresh adjudication. The parties, if they so request, will be granted an opportunity to lead additional evidence, if any. The tribunal shall thereafter pass a fresh reasoned judgment, covering all issues raised, including and particularly the core issue of

functional disability, in the light of the facts presented and the law that is germane to the subject. All contentions of all sides are kept open.

7. The parties shall appear before the tribunal for further proceedings in accordance with law on 23.10.2017.

8. By order dated 06.09.2016 in MACA 730/2016, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest at the rate of 9% (nine percent) with UCO Bank, Delhi High Court branch. By order dated 21.10.2016, Rs.1,50,000/- was allowed to be released to the claimant from out of such deposit, the balance directed to be kept in 8 (eight) fixed deposit receipts of equal amounts for different periods, the right to monthly interest there-against being given to the claimant. The amount already received by the claimant and the element of interest, if credited, to his account, shall be liable to be adjusted in the fresh award to be adjudicated by the tribunal. The balance lying in deposit in the above mentioned account shall presently be refunded to the insurance company alongwith statutory deposit.

9. Both appeals stand disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 11, 2017

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