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

Decided on: 21st August, 2017

\+ MAC APPEAL No. 768/2016

HDFC ERGO GENERAL INS. CO. LTD. ….. Appellant
Through: Mr. A.K. Soni, Adv.

versus

TRIBHUVAN & ORS. ..... Respondents
Through: Mr. Anshuman Bal, Adv. for R-1.

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

JUDGMENT (ORAL)

1. The first respondent suffered injuries in a motor vehicular accident that occurred on 28.03.2013, due to negligent driving of car bearing registration no. HR 51W 9317, which was admittedly insured against third party risk for the period in question with the appellant (insurer). The treatment that he had to undergo could not lead to full recovery as he has suffered shortening of his right leg by one and half inches, steel rod having been implanted in his right lower limb during two surgical procedures, his physical disability having been opined by the board of doctors (Ex.PW2/43) to be 40% in relation to the said limb.

2. The tribunal, on his claim petition (suit no. 272/2013), by judgment dated 21.07.2016, awarded compensation in the sum of Rs. 10,60,000/-, fastening the liability on the appellant which was called

upon to pay with interest @ 9% per annum. The said amount includes loss of future earning capacity calculated at Rs. 7,19, 222.40 on the assumption that the functional disability is 40%, his income having been found to be Rs. 8,814/- per month and the multiplier of 17 having been applied.

3. The appeal by the insurer questions the award on the ground that the functional disability has been wrongly assessed.

4. During the course of hearing, the learned counsel for the claimant fairly conceded that the medical officers who had examined the first respondent were not called in to depose and affirm the effect of the injuries and the handicap suffered. He also fairly conceded that there is some discrepancy in the version of the claimant in that at one stage he would describe the nature of his avocation as load bearing worker while in the cross-examination as one assisting in moulding job. It is also fairly conceded that for moulding job, the use of lower limb is not crucial as is assumed by the tribunal to assess the functional disability.

5. Having regard to the nature of injuries suffered and their permanent effect, as indeed the nature of engagement of the claimant, the functional disability is assessed at 20%. The loss of future earning on account of disability, thus, is recalculated at (8814 x 20 ÷ 100 x 12 x 17) Rs. 3,59,611.2. This would mean the award will have to be reduced by (7,19,222.40 - 3,59,611.2) Rs. 3,59,611.2. The award is, thus, reduced to (10,59,146.40 – 3,59,611.2) Rs. 6,99,535.2, rounded

off to Rs. 7 lakhs. Needless to add, it shall carry interest as levied by the tribunal.

6. By order dated 21.09.2016, the insurance company had been directed to deposit the entire awarded amount with upto date interest with UCO Bank, Delhi High Court Branch. The registry shall now take steps to have the amount in terms of the modified award with corresponding interest released to the claimant forthwith, refunding the excess in deposit with corresponding interest and the statutory deposit to the insurance company.

R.K.GAUBA, J.

AUGUST 21, 2017
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