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

Decided on: 13th July, 2017

\+ MAC.APP. 907/2016 and CMA PPL.40094/2016 (stay)

RELIANCE GENERAL INSURANCE CO LTD..... Appellant

Through: Mr. A.K.Soni, Advocate

versus

SUNIL SUBBA YADAV & ORS ..... Respondents

Through: Mr.Ajay Kumar, Advocate 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 16.05.2013 statedly due to negligent driving of motor vehicle described as HR-50B-4848 (hereinafter referred to as the offending vehicle), and has been rendered permanently disabled. He filed accident claim case (MACP No.442/2013) on 08.01.2014 before the Motor Accident Claims Tribunal (the tribunal) in the wake of detailed accident report (DAR) submitted by the police pursuant to the registration of First Information Report (FIR) No.83/2013 of Police Station Parliament Street, under Section 279/338 of the Indian Penal Code, 1908 (IPC).

2. In the claim proceedings, the appellant insurance company was impleaded as the second respondent it having concededly issued an insurance policy against third party risk in respect of the offending vehicle at the instance of the second respondent, who is described as owner of the said vehicle.

3. The tribunal upheld the case of the claimant about accident having been caused and injuries having been sustained due to negligent driving of the offending vehicle. The said findings have not been challenged and have attained finality.

4. The tribunal concluded that the claimant had suffered functional disability to the extent of 90%. It found that the income of the claimant at the relevant point of time was Rs.14,000/- per month and, on that basis, calculated loss of income in the sum of Rs.24,19,200/- and after adding other components under the various heads of expenses of medical treatment, and non-pecuniary damages, etc, the total compensation in the sum of Rs.51,40,927/- was awarded with interest, liability in such regard having been fastened against the insurance company.

5. The appeal of the insurance company is pressed on three grounds. It is argued that the decision on functional disability to the extent of 90% was uncalled for. Reference in this context is made to the evidence of Dr. Vijay Kumar Jain (PW-2) who had conceded that the claimant was in a position to walk around with support and can also engage in some sitting job, the assessment of permanent physical impairment to the extent of 90% being in relation to bilateral lower

limb. It is pointed out that the disability has not been assessed by the medical board with reference to the whole body or in the nature of functional disability. It is further the contention of the insurer that claimant's own witness (PW-3), the proprietor of Rhytham Restaurant with which the claimant claimed to have been employed at the relevant point of time itself showed the salary earned was Rs.9,000/- and, yet, the tribunal junked the said evidence and accepted the claim about the salary being not less than Rs.14,000/-, this on the basis of submissions made with reference to copy of the appointment letter of (what is described as) previous employer of the claimant, no formal evidence about such previous employment having been adduced. The insurer also questions the computation of damages under the other heads and stating that they are unduly high on the wrong assumption of functional disability being 90%.

6. The contention with regard to extent of functional disability needs further inquiry. It is seen from the tribunal's record that the claimant had been referred to Dr. Ram Manohar Lohia Hospital, New Delhi for medical opinion as to the disability and its extent. Report pursuant to the said direction came on record as Ex.PW-2/1. It simply describes the person examined as one Sunil, male 35 years. The Government hospitals issue such disability certificate in a detailed format where care is taken to describe the person examined fully including by addition of his photograph. No such precaution has been taken. The disability certificate does not even indicate the parentage or address of the person examined. This, in addition to the evidence of PW-2 as referred to above, impels one to conclude that there is a case

for fresh assessment and evaluation of the disability and its extent. Ideally, this should be undertaken from a hospital other than the one where the claimant was earlier referred.

7. On being asked, the counsel for the claimant fairly conceded that formal evidence with regard to previous employment also should have been adduced if that were to be the basis for the calculation of income. The counsel submitted that the appeal may be allowed and the matter remitted to the tribunal so that not only the extent of disability may be re-evaluated but he may also get another opportunity to adduce proper evidence as to his employment and earnings.

8. In above facts and circumstances, the appeal is allowed. The impugned award is set aside to the extent it calculated the compensation that is to be awarded. The tribunal shall take necessary steps to have the claimant re-examined by a board of doctors of a Government hospital other than the one where the claimant was earlier examined and secure a proper certificate, and also take formal evidence in such respect so as to reach appropriate findings on the question of functional disability. For such purposes, and also for purposes referred to above, the claimant shall be called up to lead additional evidence followed by opportunity to the opposite party to lead evidence in rebuttal, if any.

9. The parties shall appear before the tribunal for further proceedings in accordance with law on 17th August, 2017.

10. Needless to add, given the nature of medical condition claimed, the tribunal shall render its fresh decision expeditiously.

11. In terms of order dated 26.10.2016, the insurance company had been directed to deposit Rs.30 lacs with upto date interest with UCO Bank, Delhi High Court Branch and to keep the same in fixed deposit. By order dated 25.05.2017, forty percent (40%) out of the said deposited amount was allowed to be released. The amount already released shall be suitably adjusted in the award to be passed afresh by the tribunal. The balance, lying in fixed deposit with statutory amount, shall be presently refunded to the appellant insurance company.

12. The appeal is disposed of in above terms.

R.K.GAUBA, J.

JULY 13, 2017
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