$~15

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

Decided on: 06th September, 2017

\+ MAC.APP. 929/2016 and CM 41386/2016

THE NEW INDIA ASSURANCE CO LTD ..... Appellant

Through: Mr. J.P.N. Shahi and Ms. Komal Dhingra, Advocates

versus

DAYA NAND & ORS ..... Respondents

Through: Mr. Sudhanshu Tomar and Mr.S.H. Khan, Advocates for R-1

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

<u>JUDGMENT (ORAL)</u>

1. The first respondent suffered injuries in a motor vehicular accident that occurred on 21.04.2009 in the area of Janakpuri, New Delhi due to the negligent driving of Wagon-R car bearing registration no.DL-8CU-0034, admittedly insured against third party risk with the appellant / insurance company (insurer) for the period in question. On his claim petition (petition no.77329/2016), the Motor Accident Claims Tribunal (Tribunal), after inquiry, by judgment dated 27.08.2016, awarded compensation in the total amount of Rs.21,52,719/-, directing the insurance company to pay the same with interest at the rate of nine per cent (9%) p.a. from the date of filing of

the petition, this inclusive of Rs.3,25,402/- as loss of earnings during the period of 54 months when the claimant was under treatment, it requiring hospitalization for five times during which he underwent seven surgical interventions and Rs.13,97,184/- awarded towards loss of future earning capacity on account of the functional disability which has been assessed to the extent of 90%, both lower limbs having been crushed, the medical opinion, as per disability certificate (Ex. PW3/1), being to such effect.

2. The insurer is in appeal pressing it only to question the calculation of loss of earning during the period of treatment and loss of earnings in future due to disability on the ground that the tribunal, though having noted that the minimum wages prevalent on the date of cause of action were Rs.3,934/-, has factored in the revised wages which were brought in force over the later period.

3. It is noted that the minimum wages were revised upwards by the Government of NCT of Delhi with effect from 01.08.2009, 01.02.2010, 01.02.2011, 01.04.2011, 01.10.2011, 01.04.2012, 01.10.2012, 01.04.2013 and 01.10.2013. It is indeed heartening to see that the tribunal did not compute the loss mechanically and was vigilant enough to note that the minimum wages had not remained frozen over the time the judicial scrutiny and process could conclude. Since the losses suffered include those in future, the revisions till the award was rendered were considered legitimately. The factoring in of the revised rate of wages was, thus, just and fair method of calculation of the loss of earnings and consequently the same cannot be grudged.

4. The appeal, therefore, is found devoid of substance and is dismissed. The pending application also stands dismissed.

5. By order dated 07.11.2016, the insurance company had been directed to deposit fifty per cent (50%) of the awarded amount with up-to-date interest with UCO Bank, Delhi High Court Branch as a pre-condition to the stay against the execution of the award. The said amount was directed to be kept in fixed deposit receipt till further directions were given by the court, though monthly interest being allowed to be released to the claimant. By subsequent order dated 17.04.2017, some portion of the principal amount of compensation deposited as above was allowed to be released to the claimant, the balance held back. The said order was modified further by order dated 27.04.2017 when an amount of Rs.10,00,000/- (Rupees Ten Lakh Only) was permitted to be released to the claimant. The balance amount deposited by the insurance company shall now be released to the claimant.

6. The insurance company will be obliged to satisfy the award granted by the tribunal in entirety by making requisite deposit with the tribunal within 30 days.

7. The statutory amount shall be refunded.

8. The appeal and accompanying application are disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 06, 2017

yg