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

% **Date of Decision: 16th March, 2017**

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\+ MAC.APP. 465/2012

UNITED INDIA INSURANCE CO LTD ..... Appellant
Through: Ms. Suman Bagga, Mr.Pankaj Gupta, Advs.

versus

SARUPI DEVI & ORS ..... Respondents
Through: Mr. Rajesh Pandey, Adv. for respondent no.1.
Mr. Sukh Dev Singh, Adv. for Mr.Jagjit Singh, Adv. for respondent no.3.

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\+ MAC.APP. 1064/2016

SARUPI DEVI ..... Appellant
Through: Mr. Rajesh Pandey, Adv. for respondent no.1.

versus

UNITED INSURANCE CO LTD & ORS ..... Respondents
Through: Ms. Suman Bagga, Mr.Pankaj Gupta, Advs.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The accident dated 4th September, 2002 resulted resulted fracture on her right leg with de clubbing injuries. She suffered a non-

union tibia with shooting and stiff ankle and right knee which resulted in 45% disability in respect of lower right limb. The appellant remained hospitalized from 4th September, 2002 to 10th September, 2002 and underwent two surgeries.

2. The Claims Tribunal awarded Rs.20,000/- towards medical expenses, Rs.15,000/- towards conveyance, special diet and attendant charges, Rs.25,000/- towards pain and suffering and enjoyment of life. The Claims Tribunal awarded Rs.2,89,500 towards loss of earning capacity by taking the minimum wages of Rs.2,679.70 in respect of an unskilled person and taking her functional disability as 100%. The total compensation awarded is Rs.3,46,000/-.

3. The appellant in MAC.APP.465/2012 is seeking recovery rights against respondent no.3 (owner of the offending vehicle) whereas the appellants in MAC.APP.1064/2016 are seeking enhancement of the award amount.

4. Learned counsel for the appellant in MAC.APP.1064/2016 urged at the time of the hearing that the compensation awarded under the head of treatment, conveyance, special diet, attendant charges, pain and suffering be enhanced. It is submitted that the functional disability of the appellant be taken as 100% as the appellant is unable to do any work and future prospects be taken into consideration.

5. The appellant in MAC.APP.1064/2016 is present in Court and her condition has been seen. The appellant is unable to stand without crutches due to non-union of the Tibia bone of the right foot and she is standing with the help of crutches.

6. This Court is of the view that the compensation awarded to the appellant in MAC.APP.1064/2016 is grossly inadequate and it warrants enhancement. The Claims Tribunal awarded Rs.25,000/-

towards pain and suffering and loss of enjoyment of life. A further sum of Rs.75,000/- is awarded under the head of pain and suffering and Rs.75,000/- under the head of loss of amenities of life. A sum of Rs.1 lakh is awarded under the head of disfiguration. The compensation under the other heads is upheld. The appellant would be entitled to total compensation of Rs.5,96,000/- (Rs.3,46,000/- + Rs.2,50,000/-).

7. The appellant in MAC APP.465/2012 is seeking recovery rights against the owner of the offending vehicle on the ground that the driver of the offending vehicle was not holding a valid driving licence at the time of the accident. The appellant examined its investigator as R-3/W-1 who conducted verification of the record of the criminal case and submitted the report dated 24th January, 2009 in which he stated that no copy of the driving licence was found in the record of the criminal case.

8. The owner of the offending vehicle examined its Senior Manager (Finance) as R-2/W-1 who admitted that respondent no.1 was driving the vehicle at the time of the accident. In cross-examination, he deposed that he did not remember if the driving licence of the driver was seen at the time of giving the appointment. He admitted that the driving licence was not mentioned in the bio-data of the driver. He further admitted that he did not have any driving licence with him. He further deposed that the driver left the company after one month of the accident.

9. This Court is satisfied that the appellant insurance company is entitled to the recovery rights as the driver of the offending vehicle was not holding any valid driving licence.

10. In the facts and circumstances of this case, both the appeals are

allowed and the award amount is enhanced from Rs.3,46,000/- to Rs.5,96,000/- along with interest @ 9% per annum from the date of institution i.e. 22nd March, 2005 to be paid by United India Insurance Company Ltd. United India Insurance Company Ltd. is granted recovery rights to recover the award amount from M/s. Punihani International, after depositing the award amount.

11. The appellant has already deposited the Rs.4,67,461/- with UCO Bank, Delhi High Court Branch in terms of the award dated 10th February, 2012 passed by the Claims Tribunal out of which 75% amount has been released to claimant, Sarupi Devi@ Sarupe Devi in terms of order dated 6th November, 2012 and the balance amount is lying in fixed deposit with UCO Bank, Delhi High Court Branch. UCO Bank, Delhi High Court Branch is directed to release 50% of the balance amount to the claimant, Sarupi Devi@ Sarupe Devi and the balance 50% amount be kept in fixed deposit for a period of one year with cumulative interest.

12. The original FDR shall be retained by UCO Bank, Delhi high court Branch. However, the photocopy of the same be furnished to the claimant.

13. The maturity amount of the aforesaid FDR shall be transferred to the savings bank account No.602910110003210 of Sarupe Devi with Bank of India, Okhla SME Branch [IFSC Code: BKID0006029, MICR Code: 110013021].

14. United Insurance Company Ltd. is directed to deposit the enhanced award amount of Rs.2,50,000/- along with interest @ 9% per annum from 22nd March, 2005 within a period of four weeks from today with UCO Bank, Delhi High Court Branch by means of a cheque drawn in the name of UCO Bank A/c Sarupi Devi. United

India Insurance Company Ltd. would be entitled to deduct the TDS, if the interest per year exceeds Rs.50,000/-.

15. Upon the aforesaid amount being deposited, UCO Bank shall keep the said amount in 120 FDRs of equal amount for the period 1 month to 120 months with cumulative interest.

16. All the original FDRs shall be retained by concerned bank. However, the statement containing FDR number, FDR amount, date of maturity and the maturity amount be furnished to the claimant.

17. The maturity amount of the FDRs along with interest shall be transferred to the savings bank account of claimant Sarupi Devi@ Sarupe Devi with Bank of India, Okhla SME Branch.

18. No cheque book or debit card be issued to claimant by Bank of India, Okhla SME Branch without permission of this Court. However, in case, the debit card/cheque book has already been issued, Bank of India, Okhla SME Branch shall cancel the debit card and/or cheque book.

19. No loan or advance or pre-mature discharge shall be permitted without the permission of this Court.

20. The claimant is at liberty to approach this Court for release of further amount in case of any financial exigency.

21. The statutory amount be refunded back to United India Insurance Company Ltd.

22. Copy of this judgment be given *dasti* to counsel for the parties under the signature of the Court Master.

MARCH 16, 2017/dk **J.R. MIDHA, J.**