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

Decided on: 31st July, 2017

+ **MAC APPEAL 1103/2016**

ORIENTAL INSURANCE COMPANY LTD. Appellant

Through: **Mr. Tarkeshwar Nath & Mr.
Saurabh Kumar Tuteja, Advs.**

versus

ROSHAN JAHAN & ORS. Respondents

Through: **Mr. M.K. Sharma, Adv. for
respondent.**

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The first respondent earning his livelihood from small tailoring job, suffered injuries in motor vehicular accident that occurred on 25.05.2009 involving rash driving of water tanker bearing no. DL 1LK 3820, admittedly insured against third party risk with the appellant insurance company. On her claim petition (MACT No. 4624/2016), the tribunal held inquiry. It was found that the claimant had suffered fracture in both her legs which required prolonged hospital treatment rendering her immobile for seven months, the surgical procedure requiring steels rods to be inserted in each of the lower limbs. The tribunal, upholding her case of accident due to negligent driving of the water tanker, awarded compensation in the total sum of Rs. 3,60,000/-

which includes awards under the heads of loss of enjoyment of life and pain & suffering. The tribunal noted that there was no evidence of any permanent disability.

2. The insurance company which has been burdened with the liability to pay has come up in appeal questioning the award under the head of loss of enjoyment of life on the ground there was no permanent disability and, therefore, compensation under such heads of non-pecuniary damages was uncalled for. Reliance in this context is placed on the judgment of the Supreme Court on *Raj Kumar vs. Ajay Kumar 2011 (1) SCC 343*. It also submits that awards of Rs.1 lakh towards pain & suffering was excessive.

3. Whilst technically it may be true on the part of the insurer to argue that in absence of proof of permanent disability compensation under head of loss of enjoyment of life should not have been included, the fact remains that the evidence also shows that the claimant would require further medical treatment in that steel rods have been implanted in both her limbs which, at some stage, might require removal consequent upon which further pain & suffering also has to be borne in mind. In these circumstances, the total sum awarded cannot be said to be excessive.

4. The appeal is dismissed. The amount deposited by the insurance company shall be released to the claimant.

5. The statutory amount shall be refunded.

R.K.GAUBA, J.

JULY 31, 2017

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