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

Decided on: 16th October, 2017

\+ MAC.APP. 657/2015 and CM 15866/2015 and 8461/2016

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

Through: Ms. Awantika Mahohar, Advocate

versus

CONSTABLE MOHAR SINGH & ORS ..... Respondents

Through: Mr. S.N. Parashar and Ms. Pankaj Kumari, Advocates for R-1

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

JUDGMENT (ORAL)

1. The first respondent (claimant), a member of Delhi Police, suffered injuries in a motor vehicular accident that had occurred on 04.03.2014 when the motorcycle bearing registration no.DL-1SN-9594 (motorcycle) on which he was on patrolling duty came to be involved in a collision with another motor vehicle described as Tata Pickup bearing registration no.UP-13T-8194 (offending vehicle), admittedly insured against third party risk with the appellant / insurance company (insurer) for the period in question.

2. On his accident claim case (suit no.173/2014), the Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 20.05.2015, found a case made out for compensation under

Section 166 of the Motor Vehicles Act, 1988. It awarded compensation in the total sum of Rs.4,87,824/-, this inclusive of Rs.3,01,824/- under the head of compensation for loss of salary / future and directed the insurer to pay the same with interest at the rate of 9% p.a. excluding certain period (17.09.2014 to 18.11.2014).

3. The insurer is in appeal to question the above mentioned award of compensation, particularly the award included under the head of compensation for loss of salary / future. It is pointed out that the said amount has been calculated by multiplying the monthly salary of Rs.25,152/- for a period of twelve months without any basis. Reliance was placed by the insurance company on a reply received under the Right to Information Act, 2005 from the department where the claimant has been employed.

4. Against the aforesaid backdrop, directions were given by order dated 04.08.2017 to the claimant to discover the true facts on oath. The claimant has filed his affidavit, sworn on 09.10.2017, which is accompanied by a copy of DD entry no.82B dated 06.03.2014 of police station Jamia Nagar and translated copy of the DD entry no.35B dated 05.04.2014 also of police station Jamia Nagar. Having regard to the declaration made in the affidavit, and the documents filed in support, it is clear that the claimant was constrained to avail of leave of absence from duty on medical grounds for a period only of one month (04.03.2014 to 04.04.2014) on account of the grievous injury suffered.

5. At the hearing, it is fairly conceded on behalf of the claimant that he did not suffer any permanent disability. It is also fairly

conceded that besides the leave of absence for one month, no other loss on account of leave, or salary, was incurred. In these circumstances, the compensation on account of loss of income cannot be for more than one month's salary. Thus, instead of Rs.3,01,824/- under the said head, the award shall include amount of salary for a period of one month, it being Rs.25,152/-.

6. The compensation is consequently to be reduced by [Rs.3,01,824/- (-) Rs.25,152/-] Rs.2,76,672/-. It is accordingly reduced to [Rs.4,87,824/- (-) Rs.2,76,672/-] Rs.2,11,152/-, rounded off to Rs.2,12,000/- (Rupees Two lakh and twelve thousand only). The award is modified accordingly. It shall carry interest as levied by the tribunal.

7. The insurance company had been directed by order dated 19.08.2015 to deposit the entire awarded amount with the Registrar General and from out of such deposit, 50% was permitted to be released to the claimant, the balance to be kept in fixed deposit receipt. The award has been reduced by more than 50%. Therefore, it is clear that excess has come to be released to the claimant. The counsel for the claimant, on being asked, submitted that substantial portion would still be lying in fixed deposit receipt. He undertakes to refund the excess to the insurance company, which he must do within 30 days. The balance lying in deposit with the Registry shall be refunded, with statutory deposit, to the insurance company.

8. The appeal and the pending applications are disposed of in above terms.

R.K.GAUBA, J.

OCTOBER 16, 2017
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