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

Decided on: 20th September, 2017

\+ MAC APPEAL No. 760/2015

SANTOSH SINGH ..... Appellant

Through: Ms. Amandeep Kaur, Advocate

versus

RAMESH KUMAR & ANR. (THE NEW INDIA ASSURANCE CO. LTD.) ..... Respondents

Through: Ms. Shuchi Singh, Advocate with Mr. Sanjay Kumar Dubey, Advocate for R-2.

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

JUDGMENT (ORAL)

1. The appellant, then 64 years old, had suffered injuries in a motor vehicular accident that occurred on 05.11.2008 at about 7:45PM due to negligent driving of motorcycle bearing registration No.DL-8SNA-4345, admittedly insured against third party risk with the second respondent (insurer) for the period in question. On his claim petition (MACT No.333/09/13) instituted on 17.03.2008, the tribunal held inquiry and, by judgment dated 22.07.2013, held the first respondent, the driver of the motorcycle to be responsible for the accident. The said finding has attained finality as it was not challenged by any party.

2. The tribunal awarded compensation in the total sum of Rs.1,07,953/-, fastening the liability on the insurer to pay with interest @ nine per cent (9%) per annum, the said amount inclusive of Rs.40,000/- under the non-pecuniary heads of damages collectively described as pain, suffering, mental shock and trauma, besides pecuniary damages under various heads including loss of income of Rs.7,366/-.

3. The claimant was not satisfied as he had led evidence to show that the injuries suffered in the accident had rendered him permanently disabled. On his application for review, by order dated 31.05.2014, the tribunal added Rs.55,245/- to the compensation, it being the loss of future earnings on account of functional disability assessed to the extent of 8%.

4. By the appeal at hand, it is contended that since the disability certificate (Ex.PW-1/2) had shown that the claimant suffered from post-traumatic stiffness of the right ankle, it having been found to be permanent impairment to the extent of thirty two per cent (32%) in relation to the said lower limb, the functional disability should have been calculated at 32%. It is argued that the injuries suffered not only fracture in the ankle, but also in the backbone.

5. The submissions of the claimant, in the above regard, do not impress this court. The injuries may have included those suffered in the back. But then, such injuries in the back did not add to the disability factor. The medical opinion clearly relates disability only to the fractured ankle.

6. Given the fact that the claimant was working as an accountant, having regard to the description of the disability (stiffness of the right ankle), the assessment of the tribunal of functional disability at 8% is found to be just and proper.

7. There is, however, merit in the contention of the claimant about the non-pecuniary composite sum of Rs.40,000/- being deficient. Having regard to the fact that the claimant was 64 years old on the relevant date and his permanent impairment would affect quality of life even in future, he having undergone surgical procedure more than once, the subsequent one being to remove the implant that had to be put in his body, the non-pecuniary damages are increased to Rs.1,00,000/- under the various composite heads described in the tribunal judgment. This would result in increase of the award by Rs.60,000/- (Rupees Sixty Thousand Only). Needless to add, the enhanced portion of the award shall carry interest as levied by the tribunal.

8. The insurer (second respondent) is directed to satisfy the enhanced award with corresponding interest by requisite deposit with the tribunal within thirty days, making it available to be released to the appellant/claimant.

9. The appeal is disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 20, 2017
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