$~8 & 9

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

Decided on: 21st July, 2017

\+ MAC.APP. 827/2015 and CM No.24436/2015

IFFCO TOKIO GENERAL INSURANCE CO LTD …. Appellant

Through: Mr. K.K. Bhat, Advocate

versus

RAHUL KUMAR & ANR ..... Respondents

Through: Mr. Navneet Goyal, Adv. for R-1

\+ MAC.APP. 356/2016 and CM No.31094/2016

RAHUL KUMAR ..... Appellant

Through: Mr. Navneet Goyal, Adv. for R-1

versus

IFFCO TOKIO GENERAL INSURANCE CO LTD & ANR ..... Respondents

Through: Mr. K.K. Bhat, Advocate

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

JUDGMENT (ORAL)

1. The appellant in MACA 356/2016, who is the first respondent in MACA 827/2015 had suffered injuries in a motor vehicular accident that is stated to have occurred don 31.01.2009. It is the

admitted case that he was travelling in a car bearing no.DL-2-FW-0333 driven by Ashish Gupta, who is the respondent in both these appeals, he being the driver-cum-owner. It is also admitted that the said car was insured against third party risk for the period in question with Iffco Tokio General Insurance Co. Ltd., appellant in MACA 827/2015 and first respondent in MACA 356/2016.

2. The petition was contested by the driver-cum-owner of the car, as also the insurer, denying the allegation of negligence. The claim was accepted and compensation was awarded in favour of Rahul Kumar by the Motor Accident Claims Tribunal (Tribunal) by judgment dated 08.07.2015. Pertinent to note that the Tribunal has returned a finding that he has suffered functional disability to the extent of 90%. It is this which is the basis of substantial portion of the award relating to future earning capacity.

3. One of the contentions urged by the insurer in its appeal is that the income of Rs.18,000/- p.m. was wrongly assumed against the admission on the part of the claimant in his deposition that he was unemployed at the relevant point of time, the document otherwise submitted indicating that he was in some employment till 01.02.2008 which would be almost one year prior to the accident.

4. The insurance company while also raising the issue of negligence presses for re-computation of the damages towards future earning loss on the basis of minimum wages for a graduate.

5. The claimant has also come up in appeal seeking enhancement.

6. After some arguments, the learned counsel for the claimant fairly conceded that the proper evidence about the income or possible

earning capacity of the claimant was not adduced. He, thus, submitted that the impugned judgment may be set aside and the matter remanded so that appropriate evidence can be allowed. He also conceded that the amount already received by him in terms of the interim directions in the appeal of the insurance company may be adjusted against the award that may be passed afresh.

7. The learned counsel for the insurer submitted that he leaves the matter to the court.

8. In the given facts and circumstances, where calculation on the basis of minimum wages may result in drastic reduction of the compensation, the claimant insisting that his earning capacity was much more than what would be ordinarily available to a worker earning livelihood on minimum wages, the request of the claimant is accepted and the impugned judgment is set aside. The parties are relegated to further inquiry before the Tribunal in which further evidence will be allowed to be led though it being restricted to the earning capacity. The other contentions of the insurance company in its appeal are kept open to be agitated at appropriate stage.

9. The parties shall appear before the Tribunal on 21.08.2017.

10. The insurance company had deposited amount in this court in terms of the earlier directions in its appeal, out of which some portion has already been released to the claimant. The amount already released will be subject to adjustment against the award which may be passed afresh. The balance lying in deposit shall be presently refunded to the insurance company with the statutory deposit.

11. Both appeals and the pending applications are disposed of in above terms.

R.K.GAUBA, J.

JULY 21, 2017
yg