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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 10th November, 2017

\+ MAC.APP. 832/2015

HDFC ERGO GENERAL INSURANCE CO. LTD.

..... Appellant

Through: Mr. A.K. Soni, Adv.

versus

ANIL KUMAR & ANR. ..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The first respondent (claimant) had instituted accident claim case (suit no. 140/2011) on 30.05.2011, impleading besides the second respondent, the appellant (insurer) as parties seeking compensation for injuries sustained and permanent disability consequently suffered due to motor vehicular accident that had occurred on 06.04.2011 on account of negligent driving of car bearing registration no. DL 3C AQ 1953, the car being admittedly insured against third party risk with the appellant. The tribunal after inquiry, by judgment dated 12.08.2015, returned a finding that the accident had indeed occurred, resulting in injuries and disability being suffered by the claimant, due to negligent driving of the car. It also held that the claimant had suffered permanent disability, the functional disability having been assessed to be to the extent of 50%, this on account of amputation of left leg below knee (Ex.PW-1/4).

The tribunal found that the claimant was earning Rs. 7,500/- per month as salary from private company Swadeshi Auto Pvt. Ltd., the terms and conditions having been proved by Samir Kalra (PW-2). The tribunal added the element of 50% of future prospects of increase in income and applied the multiplier of 25 to grant the compensation towards loss of future prospects/earnings due to disability. The total compensation granted was in the sum of Rs. 18,80,226/- which includes Rs. 16,87,500/- towards loss of future earnings.

2. The appeal is pressed to question the invocation of multiplier of 25. The claimant inspite of due service has failed to appear to contest.

3. Having heard the learned counsel for the appellant and having perused the record, this Court finds substance in the appeal. There was no occasion for the multiplier of 25 to be applied. The appropriate multiplier, given the age of 35 years, would be 16. Since the notional income arrived at, after factoring in the element of future prospects is Rs. 11,250/- the loss of income due to functional disability is recomputed as (11250÷ 2 x 12 x 16) Rs. 10,80,000/-. Thus, the total compensation is to be reduced by (16,87,500-10,80,000) Rs. 6,07,500/-.

4. The award is modified and reduced to (18,80,226- 6,07,500) Rs. 12,72,726/-, rounded off to Rs. 12,73,000/- (Rupees Twelve Lakhs Seventy Three Thousand only).

5. Needless to add, it shall carry interest as levied by the tribunal. The insurance company had been directed by order dated 28.10.2015 to deposit the awarded amount with the Registrar General as a pre-

condition to the stay against execution and out of such deposit 50% was permitted to be released to the claimants, the balance kept in fixed deposit account. The registry shall calculate the balance payable to the claimants in terms of the modification ordered above and refund the excess, if any, to the insurance company.

6. The appeal is disposed of in above terms.

7. The statutory amount shall be refunded.

R.K.GAUBA, J.

NOVEMBER 10, 2017
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