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

Decided on: 19th July, 2017

\+ MAC APPEAL No. 858/2015

BAJAJ ALLIANZ GENERAL INS. CO. LTD....... Appellant
Through: Mr. Pradeep Gaur, Adv.

versus

SH. RAJESH PRASAD & ORS. ..... Respondents
Through: None.

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

JUDGMENT (ORAL)

1. The first respondent was awarded compensation in the total sum of Rs. 18,10,000/- with interest by the tribunal, by judgment dated 29.07.2015 on the file of accident claim case (suit no. D-310/2014), for the injuries and disability suffered by him as a result of motor vehicular accident that occurred on 22.06.2014 involving rash driving of Honda City car bearing registration no. DL 9CU 1096 which was admittedly insured against third party risk with the insurance company which was burdened with the liability to pay.

2. The insurance company while admitting the liability to indemnify the insured (owner of the car) questions the computation on two grounds. It submits that the addition of 50% of future prospects of increase in income was uncalled for, given the fact that the claimant then aged 34 years, was to retire from the service in the position of

Petty Officer in Indian Navy in February, 2015. It is also the contention of the insurance company that the addition of Rs. 50,000/- in the component of loss of income on the ground that the claimant had availed leave for 56 days as per leave record (Ex.PW-1/5) was not proper inasmuch as the claimant in the course of deposition has admitted that there was no salary loss.

3. Having heard the learned counsel for the insurance company, this Court is of the opinion that the appeal must fail on both counts.

4. The claimant concededly was in regular service of Indian Navy. It may be that the tenure of the said service was only for 15 years but then the evidence also shows the said tenure was subject to extension which could not be availed of due to the permanent disability suffered. Even otherwise, it cannot be said that after discharge from the said service in Indian Navy, the claimant would not work for gain. His capacity for gainful employment has suffered on account of disability which has to be compensated.

5. The leave earned by a salaried person is meant for being availed for own purposes. The fact that the claimant had to take leave of absence from duty on account of the injuries suffered is a reason which has been foisted on him by the circumstances arising out of the accident. The evidence shows the leave earned could be encashed at the time of retirement from service. Therefore, there has been a net loss in terms of money which has been rightly included in the award.

6. The appeal is dismissed.

7. By order dated 06.11.2015, the insurance company was directed to deposit the awarded amount with the Registrar General of this

Court, from which fifty per cent (50%) was allowed to be released to the claimants. The balance kept in interest bearing fixed deposit in UCO Bank, Delhi High Court Branch shall now be released to the claimant.

8. Statutory deposit shall be refunded.

R.K.GAUBA, J.

JULY 19, 2017
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