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

Decided on: 14th September, 2017

\+ MAC.APP. 855/2015 and CM APPL.26106/2015 (stay)

THE NEW INDIA ASSURANCE CO LTD ..... Appellant
Through: Mr. J.P.N. Shahi, Advocate

versus

DEEPAK KUMAR & ORS ..... Respondents
Through: Mr. Sayak Bandhyopadhyay, Advocate for R-1.

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

JUDGMENT (ORAL)

1. The first respondent received injuries in a motor vehicular accident that had occurred on 22.02.2013 due to negligent driving of Maruti Van bearing registration No.DL-5CF-5317 and instituted accident claim case (MAC No.38A/2013). The Tribunal held inquiry and, by judgment dated 14.09.2015, awarded compensation in the total sum of Rs,13,47,753/-, which includes loss of future earnings, due to functional disability assessed to the extent of thirty per cent (30%). The liability has been fastened on the appellant (insurer), it admittedly having issued an insurance policy covering the third party risk in respect of the offending vehicle, it being called upon to pay the same with interest @ twelve per cent (12%) per annum.

2. In computing the loss of future income due to disability, the Tribunal accepted the last salary of Rs.18,028/- for the month of February, 2013, which was proved by representative of the employer (PW-1) company substantiated by documents (Ex.PW-1/A to PW-1/C).

3. The insurer submits that since salary slip showed deduction on account of contribution to employees provident fund in the sum of (18,028/- - 17,248/-) Rs.780/-, the same should have been kept out of consideration. It also submits that the rate of interest levied is excessive.

4. The first contention must be rejected as the contribution towards employees provident fund is from out of the salary which was earned and, therefore, cannot be discounted. The second contention, however, must be accepted as there are no special reasons set out in the impugned judgment as to why excessive rate of interest was levied. Following the consistent view taken by this Court [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.], the rate of interest is reduced to nine per cent (9%) per annum from the date of filing of the petition till realization.

5. The award is modified accordingly.

6. By order dated 06.11.2015, the insurance company had been directed to deposit the entire awarded amount with Registrar General of this Court and out of such deposit, fifty per cent (50%) was allowed to be released to the claimant. The registry shall calculate the balance

amount payable to the claimant in terms of the modification ordered above and release the same to the claimant, refunding the excess in deposit to the insurance company with statutory amount.

7. The appeal along with accompanying application stands disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 14, 2017
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