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

Decided on: 25th September, 2017

+ **MAC APPEAL 235/2016**

HARBANS LAL

..... Appellant

Through: Mr. S.N. Parashar, Advocate with
Ms. Pankaj Kumari, Advocate

versus

SHYAM & ORS. (NEW INDIA ASSURANCE CO. LTD.)

..... Respondents

Through: Mr. Vinod Trishal, Advocate for R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant had suffered injuries in a motor vehicular accident that occurred on 22.06.2010 upon the bicycle he was riding, being hit by truck bearing registration No.DL-1LGB-6446 (the truck) from behind. He instituted accident claim case (Suit No.51/2011) on 05.02.2011 impleading driver, owner and insurer of the truck as party respondents, they being first to third respondents in the appeal. On the basis of evidence led during inquiry the tribunal, by judgment dated 20.09.2011, accepted the case that the injuries had been suffered due to accident which was caused on account of negligent driving of the truck. The tribunal awarded compensation in the total sum of Rs.88,344/- and fastened the liability on the insurer (third respondent)

to pay the same with interest @ 7.5% per annum. Noticeably, the said award includes compensation under the heads of medical expenses (Rs.5,000/-), diet and conveyance charges (Rs.9,000/-), loss of income for the period of absence from duty (Rs.19,344/-), loss of future earnings (Rs.5,000/-) described as probable loss of income due to temporary disability evaluated as 63% for a period of one year and pain and suffering (Rs.50,000/-).

2. The appeal was filed seeking enhancement of the compensation, the prime contention of the appellant being that his treatment had continued even while the inquiry was being conducted by the tribunal leading to the impugned judgment and that in the wake of such further treatment, he had to suffer amputation of the right lower limb. On his application, he was allowed to adduce further evidence at the stage of appeal, such further evidence being in the form of testimony of Dr. Gyan Trivedi (AW-1) proving disability certificate (Ex.AW1/1) issued on 11.12.2015 confirming the amputation above knee of the right leg, resulting in disability which has been assessed to the extent of 85% in relation to that part of the body.

3. At the hearing, the counsel for the appellant submitted that since the subsequent developments noted above would require re-visit of the award not only consequent loss of future income due to functional disability but also to cover the areas such as additional medical expenditure, attendant charges, special diet, conveyance and need for arranging the prosthetic limb, it would be proper that the matter is remitted to the tribunal for award of just compensation. The counsel

for the insurer, on being asked, submitted that he leaves the matter to the discretion of the court.

4. In above facts and circumstances, the prayer of the appellant is granted. The impugned award is set aside and the claim case is remitted to the tribunal for further inquiry which would be restricted to the question of determination of just compensation, in as much as the finding on the issue of negligence has not been challenged by any of the affected parties and has attained finality. Thus, the further inquiry will not require presence of any respondents other than the insurer.

5. The parties (the claimant and the insurer) are directed to appear before the tribunal for further proceedings on 25.10.2017.

6. The original disability certificate and the medical record of further treatment adduced at the stage of appeal shall be returned by the registry against submission of certified copies by the claimant so that the same can be presented before the tribunal for further inquiry. Needless to add, the amount earlier received by the claimant from the insurer shall be liable to be adjusted against the award that would be passed on the conclusion of further inquiry by the tribunal.

7. The appeal is disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 25, 2017

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