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

***Decided on :- 10<sup>th</sup> January, 2018***

+ MAC.APP. 40/2018 and CM APPL. 1002-1003/2018

**ORIENTAL INSURANCE CO LTD** ..... Appellant

Through: Mr. R.K. Tripathi, Advocate

versus

**ASHOK & ORS.** ..... Respondents

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**JUDGMENT (ORAL)**

1. The insurance company seeks to assail the judgment dated 03.11.2017 of the motor accident claims tribunal in accident claims case (MACT No.6066/16) of the first respondent (the claimant) on the ground that the income on the basis of which the loss of earnings was computed in the wake of injuries suffered due to negligent driving of the insured vehicle has been over assessed.

2. It is pointed out that the claimant before the accident claims tribunal had pleaded that he was earning Rs.8,000/- per month from the job of conductor. It is also pointed out that in the course of evidence recorded in the corresponding criminal case arising out of FIR No.206/2011 of Police Station Bawana registered and investigated by the police respecting the same motor vehicular accident, while deposing as witness for prosecution (PW-1) the

claimant had testified that he was earning Rs.3,000/- per month as a helper. The insurance company contends that the income should have been treated at the same level as testified before the criminal court.

3. The argument raised is found to be wholly devoid of substance. The insurance company appears to be reading the testimony of the claimant before the criminal court selectively. It ignores the fact that the claimant had also added that his employer was paying him Rs.50/- per day towards meal expenses which would also be, from his perspective, part of the earnings. Even otherwise, it is noted from the impugned order that the tribunal has not gone by mere word of the claimant to the effect that he was earning Rs.8,000/- per month. It has instead assumed the income on the basis of minimum wages (Rs.7826/- per month) which conclusion cannot be faulted or questioned.

4. The appeal is devoid of substance and is dismissed in *limine*.

5. Pending applications also stand disposed of.

6. The statutory deposit shall be refunded to the appellant after proof is shown of the award having been satisfied.

**R.K.GAUBA, J.**

**JANUARY 10, 2018**

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