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

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Date of Decision: 02nd April, 2018

+ **MAC.APP. 283/2017**

NEW INDIA ASSURANCE CO LTD

..... Appellant

Through: **Mr. S.P. Jain, Mr. Himanshu Gambhir, Ms. Amandeep Kaur, Mr. Abhijit Chakraborty, Advocates.**

versus

MAHESH & ORS

..... Respondents

Through: **Mr. Vikas Mishra, Advocate for respondent no.1 along with respondent no.1 in person. Mr. Sameer Nandwani, Advocate as amicus curiae.**

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of Rs.2,77,676/- has been awarded to respondent no.1.
2. On 15th January, 2011 at about 10.30 PM, respondent no.1 was riding on his motor cycle in front of Bata showroom on way to Hakikat Nagar Crossing from Batra Cinema Road when he was hit by Honda City Car No.DL-7CF-1742 driven by respondent no.2.
3. Respondent no.1 suffered a fracture of femur right (Grade Type – IV) and other grievous injuries. Respondent no.1 was operated for close

reduction and internal fixation, C-arm lateral application to Gr. Trochantir internal fixation, with 7 mm CCS and close layer over suction drain ASD on 17th January, 2011.

4. The Claims Tribunal awarded compensation of Rs.26,082/- towards expenditure on treatment, Rs.10,000/- towards conveyance, Rs.10,000/- towards special diet, Rs.7,000/- towards nursing/attendant charges, Rs.45,136/- towards loss of income, Rs.50,000/- towards pain and suffering, Rs.25,000/- towards loss of amenities of life and Rs.1,04,458/- towards loss of future income. The total compensation awarded is Rs.2,77,676/-.

5. Learned counsel for the appellant urged at the time of the hearing that the compensation awarded by the Claims Tribunal is on a higher side. It is submitted that the loss of income has not been proved by respondent no.1. It is further submitted that the pecuniary as well as non-pecuniary compensation are also on higher side. It is further submitted that the future prospects should not be taken into consideration for computing the compensation.

6. Learned counsel for respondent no.1 urged at the time of the hearing that respondent No.1 sustained grievous injuries due to the accident dated 15th January, 2011 and he remained admitted for treatment from 15th January, 2011 to 18th January, 2011 for the surgery of Neck Femer of right hip, again from 14th February, 2012 to 22nd March, 2012 for surgery of left hand wrist when screw of wires were inserted in the (L) wrist and lastly admitted from 25th April, 2014 to 26th April, 2014 for removal of screw from Neck Femer of right hip. It is further submitted that the respondent has been advised further surgery of the hip for removal of ball and the estimated cost of surgery is Rs.1,70,000/-. It is further submitted that the Claims Tribunal

has not taken into consideration injuries suffered by respondent no.1 on his left hand wrist. It is further submitted that the respondent has filed the relevant documents relating to his treatment as well as future surgery. Learned counsel submits that these documents were placed on record before the Claims Tribunal but not considered by the Claims Tribunal. Respondent no.1 seeks permission to lead additional evidence before the Claims Tribunal.

7. Mr. Sameer Nandwani, learned amicus curiae submits that the additional evidence is necessary for determining the just compensation to respondent no.1 and therefore, it is in the interest of justice to remand the matter back to the Claims Tribunal.

8. This Court is satisfied that the additional evidence is necessary for determining the just compensation to respondent no.1. In the facts and circumstances of this case, the appeal is allowed, impugned award is set aside and the matter is remanded back to the Claims Tribunal for recording of the additional evidence by respondent no.1. The Claims Tribunal shall grant opportunity to the appellant to rebut the additional evidence. The Claims Tribunal shall thereafter pass a fresh award.

9. The appellant has deposited Rs.4,30,634/- with the Claims Tribunal which has been disbursed to respondent no.1 vide order dated 23rd February, 2018. The Claims Tribunal shall pass an appropriate order with respect to the adjustment of the aforesaid amount in the fresh award to be passed in the matter.

10. The parties shall appear before the Claims Tribunal on 18th April, 2018 when Respondent no.1 shall file the list of additional witnesses along with an application of summoning the witnesses. The Claims Tribunal shall

fix the date for recording of the additional evidence.

11. The record of the Claims Tribunal be returned back forthwith.

12. This Court appreciates the assistance rendered by Mr. Sameer Nandwani, learned amicus curiae.

13. The statutory amount be refunded back to the appellant.

14. The Claims Tribunal shall expedite the matter and endeavour to decide the same within a period of eight months from the first date of recording of the evidence.

15. Copy of this judgement be given *dasti* to counsels for the parties as well as learned amicus curiae under signatures of the Court Master.

APRIL 02, 2018

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J.R.MIDHA, J.

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