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

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+ MAC.APP. 280/2017

ORIENTAL INSURANCE CO LTD Appellant
Through: Mr. R.K. Tripathi, Advocate

versus

SHYAM BAHADUR GHARTI MAGAR & ORS..... Respondents
Through: Ms.Abha Malhotra, Advocate for
respondent no.1.

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+ MAC.APP. 24/2018

SHYAM BAHADUR GHARTI MAGAR Appellant
Through: Ms.Abha Malhotra, Advocate

versus

ORIENTAL INSURANCE CO LTD Respondent
Through: Mr. R.K. Tripathi, Advocate

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

% **ORDER**
22.02.2018

1. The parties have challenged the award of the Claims Tribunal whereby compensation of Rs.2,68,375/- has been awarded to the claimant. The appellant in MAC.APP.280/2017 is seeking reduction of the award amount whereas the appellant in MAC.APP.24/2018 is seeking enhancement of the award amount.

2. On 7th January, 2015 at 5.00 PM, the claimant Shyam Bahadur Gharti Magar was walking on the foot path at Kranti Chowk, Sadar Bazar, Delhi Cantt. when he was hit by bus bearing No.DL-1PB-4609 which resulted in

compound comminuted fracture tibia and fibula (right) with soft tissue defect. The claimant was admitted to Base Hospital on 23rd February, 2015 where he underwent surgery for insertion of a rod in his leg and was discharged on 9th March, 2015. The claimant was working as a Sepoy under '1 ARHCER' unit, (Commando) Special Frontier force (SFF) of Infantry Corps of Indian Army and was placed in the highest category of physical fitness/ functional capacity for Junior Commissioned Officer (JCOs/OR) i.e. Category '1' but due to the permanent disability suffered by him in the accident, the claimant has been permanently placed in Category '2' of physical fitness/ functional capacity, according to the physical standards for categorizations of serving JCOs/OR.

3. The Claims Tribunal has awarded compensation of Rs.15,000/- towards conveyance, Rs.15,000/- towards special diet, Rs.38,375/- for loss of income, Rs.1 lakh towards pain and suffering, Rs.1 lakh towards loss of amenities of life. Total compensation awarded is Rs.2,68,375/-.

4. Learned counsel for the appellant in MAC.APP.280/2017 urged at the time of the hearing that the compensation awarded to the claimants be reduced under the heads of conveyance, special diet, pain and suffering and amenities.

5. Learned counsel for the claimant urged at the time of the hearing that the Claims Tribunal has not awarded any compensation under the heads of loss of income and earning capacity. Learned counsel for the claimant further submits that in view of the restriction imposed upon the claimant by being placed in Category '2' of physical fitness/ functional capacity, the claimant will be allowed to only serve in a peace locations or plains area and will not be allowed to serve in hilly terrain i.e. altitude above 2500 meters and extreme cold areas. Consequently, the career path of the claimant has changed due to the injury suffered by him. As per the affidavit of Capt. Ravi

Raj Sharma, the claimant had suffered a loss of income to the tune of Rs.3,48,540/- till October, 2017. Learned counsel for the claimant further submits that the claimant, having been placed in Category '2' of physical fitness/ functional capacity, will suffer loss of promotions in the ranks and the length of his service has been shortened. Learned counsel for the claimant also seeks enhancement under the heads of medical expenditure, pain and suffering, conveyance and special diet, loss of amenities of life and loss of income.

6. The claimant has filed CM No.6999/2018 in MAC.APP. 280/2017 for permission to lead additional evidence with respect to the reduction in the medical category of the claimant due to the permanent disability and the loss of income suffered on that account. This Court is satisfied that the additional evidence is necessary to determine the just compensation payable to the claimant. CM No.6999/2018 is allowed and the claimant is permitted to lead additional evidence before the Claims Tribunal.

7. In the facts and circumstances of this case, the impugned award is set aside and the matter is remanded back to the Claims Tribunal for fresh adjudication after additional evidence by the parties. The claimant shall lead additional evidence before the Claims Tribunal and the appellant would be at liberty to lead evidence in rebuttal.

8. The parties shall appear before the Claims Tribunal on 14th March, 2018 when the Claims Tribunal shall fix the date for additional evidence. The Claims Tribunal shall pass a fresh award after the additional evidence. The amount awarded by the Claims Tribunal by the award dated 20th February, 2016 has already been deposited by the insurance company with the Claims Tribunal and the said amount has been disbursed to claimant. The Claims Tribunal shall adjust the amount received by the claimant while passing the fresh award.

9. The record of the Claims Tribunal be returned back forthwith.
10. The statutory amount be refunded back to the appellant in MAC.APP.280/2017.
11. Copy of this order be given *dasti* to counsel for the parties under the signature of the Court Master.

J.R. MIDHA, J.

FEBRUARY 22, 2018

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