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

% **Date of Decision: 29th May, 2018**

\+ MAC.APP. 825/2017 & CM No.33438/2017

RELIANCE GENERAL INSURANCE CO LTD ..... Appellant
Through Ms.Prerna Mehta, Advocate

versus

RAJEEV KUMAR & ORS ..... Respondents
Through Mr.Ramraghvendra Kumar, Avocate
Mr.Pankaj Gupta, Advocate as amicus curiae.

\+ MAC.APP. 1032/2017

RAJEEV KUMAR ..... Appellant
Through Mr.Ramraghvendra Kumar, Avocate

versus

RELIANCE GENERAL INSURANCE COMPANY LTD & ORS ..... Respondents
Through Ms.Prerna Mehta, Advocate
Mr.Pankaj Gupta, Advocate as amicus curiae.

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

JUDGMENT (ORAL)

1. The parties have challenged the award of the Claims Tribunal whereby compensation of Rs.29,70,377/- along with interest @ 9% per annum has been awarded to Rajeev Kumar.

2. On 31st October, 2012 at about 11.30 PM, Rajeev Kumar was going on his motor cycle bearing no. DL-8S-NE-0448 when he was hit by a truck bearing no.HR-63B-5257 at Rajeev Nagar, Delhi which resulted in grievous injuries on his head, right hand, shoulder, right leg whereupon he was initially taken to Sanjay Gandhi Memorial Hospital, Delhi and thereafter referred to Safdarjung Hospital, Delhi and was later shifted to Jaipur Golden Hospital, Delhi. The claimant suffered Hemi Paresis i.e. one side half paralysis in relation to his left leg as per the disability certificate.

3. The Claims Tribunal awarded Rs.13,92,768/- towards loss of earning capacity by taking Rs.7,254/- as minimum wages for unskilled worker and applying the multiplier of 16. The Claims Tribunal awarded Rs.2 lakh towards pain and suffering; Rs.2 lakh towards loss of amenities of life; Rs.50,000/- towards special diet and conveyance; Rs.60,000/- towards attendant charges; Rs.9,80,561/- towards medical expenses and Rs.87,048/- towards loss of income. The total compensation awarded is Rs.29,70,377/-

4. Learned counsel for the appellant in MAC.APP.825/2017 urged at the time of the hearing that the functional disability of the claimant be taken as 75% instead of 100% to compute the loss of earning capacity.

5. Learned counsel for the claimant urged at the time of the hearing that the Claims Tribunal has not taken future prospects into consideration to compute the loss of earning capacity.

6. Mr. Pankaj Gupta, learned amicus curiae appointed by this Court submits that the compensation awarded by the Claims Tribunal is fair and reasonable.

7. There is merit in the contentions of learned counsels for both the parties that the functional disability of the claimant be reduced from 100% to 75% and the future prospects be taken into consideration to compute the loss of earning capacity. This Court is of the view that enhancement on account of addition of future prospects would neutralize the effect of the reduction on the ground of reducing percentage of functional disability for assessing the loss of earning capacity. The Court is satisfied that the compensation awarded by the Claims Tribunal is just, fair and reasonable. Applying the principles laid down in Section 167 of the Indian Evidence Act, the award of compensation of Rs.29,70,377/- is upheld for the reasons stated hereinabove.

8. The compensation amount of Rs.29,70,377/- along with interest @ 9% per annum thereon is upheld. Both the appeals are disposed off.

9. The appellant in MAC APP. 825/2017 has deposited the entire award amount with the Claims Tribunal out of which 40% amount has been released to the claimant and the balance 60% amount is lying with the Claims Tribunal.

10. The Claims Tribunal has sent status report according to which the particulars of the balance 60% amount lying in FDR are as under:-

(i) One FDR for Rs. 1,46,644/- dated 17th October, 2017 with maturity date of 17th October, 2018;

(ii) Second FDR for Rs. 23,68,800/- dated 17th October, 2017 with maturity date of 17th October, 2018.

11. List for disbursement of the amount on 2nd July, 2018.

12. The claimant shall remain present in Court on the next date of hearing. Claimant and/or his authorized representative shall produce the passbook of the savings bank account of claimant near the place of his residence as well as PAN card and Aadhaar card. The concerned bank of claimant is directed not to issue any cheque book or debit card to claimant and if the same have already been issued, the bank is directed to cancel the same and make an endorsement on his passbook to this effect. The claimant shall produce the copy of this order to the concerned bank, whereupon the bank shall make an endorsement on the passbook of claimant that no cheque book and/or debit card shall be issued to claimant without the permission of this Court. However, the concerned bank shall permit claimant to withdraw money from his savings bank account by means of a withdrawal form. The claimant shall produce the original passbook of his individual savings bank account with the necessary endorsement on the next date of hearing.

13. This Court appreciates the assistance rendered by Mr. Pankaj Gupta, learned amicus curiae in this case.

14. Copy of this order be given *dasti* to counsel for the parties under the signature of the Court Master.

सत्यमेव जयते

MAY 29, 2018 **J.R.MIDHA, J.**

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