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

% *Decided on:05.08.2019*

\+ **MAC.APP. 707/2019 & CM Nos.35046-47/2019**

BHARTI AXA GENERAL INSURANCE CO LTD. ..... Appellant
Through: Mr. Ved Vyas Tripathi, Advocate.

Versus

NARESH KHANNA & ORS. ..... Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation on two grounds. Firstly, that the computation of loss of income is based on three Income Tax Returns (ITRs) for the assessment years 2016-17, 2017-18 and 2018-19 filed by the injured – respondent. The ITRs of first two years show an income of Rs.2.27 lacs and Rs.2.97 lacs respectively, on which tax was paid. The third ITR shows an income of Rs.4,08,940/-. An Officer from the Income Tax Office was examined and he testified that the aforesaid three ITRs were correct.

2. In the circumstances, the learned Tribunal found nothing to disregard the aforesaid ITRs. It rightly took into consideration the last ITR for the assessment year 2018-19 filed by the injured while computing the loss of income. Additionally, the Court would note that the accident happened on

05.06.2018 and the tax returns were filed on 06.07.2018, i.e. exactly a month after the accident. For a person, who had been so seriously injured as to suffer permanent disability in his right lower limb upto 25%, would hardly have had the time to cook up his account books so to enhance his probable claim. He would have obviously been recuperating and restricted to bed immediately after the accident, for many weeks. Therefore, the Court finds no reason to suspect the ITRs filed. All it shows is that the injured is a regular tax payer and has filed his returns within time. There is no merit in the argument. It is accordingly dismissed.

3. The second argument is that 25% physical disability apropos his right lower limb has been erroneously taken as 25% functional disability for the whole body by the learned Tribunal. The learned counsel for the appellant argues that functional disability ought to be lesser than physical disability. However, no reason has been offered as to why it should be lesser than what has been considered by the learned Tribunal.

4. The Court would note that the impugned order has taken into consideration various judgments in which, in the peculiar circumstances of each case, functional disability was considered equal to the physical disability. The injured is a second-hand car salesman, which obviously would require regular movement for his work and he would not have been desk-bound. Therefore, the physical disability of 25% in his right lower limb has been rightly considered as functional disability to the extent of 25% for the whole body. Therefore, the second argument too is untenable and is rejected.

5. The appeal is without merits and is accordingly dismissed. The pending applications also stand dismissed.

6. The statutory deposit of Rs.25,000/- alongwith interest accrued thereon be deposited in the 'AASRA' Fund.

NAJMI WAZIRI, J.

AUGUST 05, 2019
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