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

% *Decided on: 28.08.2019*

\+ **<u>MAC.APP. 757/2019 & CM Nos. 38458-59/2019</u>**

UNITED INDIA INSURANCE CO. LTD. ..... Appellant
Through: Mr. Animesh Sinha, Advocate.

Versus

NARESH SAREEN & ORS. .....Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>NAJMI WAZIRI, J. (Oral)</u>

1. This appeal impugns the award of compensation dated 04.04.2019 passed by the learned MACT in MACT No. 357877/2016 on two grounds: i) that there is no evidence apropos the incapacitation of the injured for 17 months, which was allegedly spent in recuperation from the injury, ii) that the ITR was filed for the Assessment Year (AY) 2016-17 and that the accident happened on 14.02.2016. The injured was earning about Rs.30,000/- per month and as per the aforesaid ITR, his gross income was Rs.3,29,700/- and on the said amount he had paid a tax of Rs.1,000/-. It is argued that the ITR had been inflated only for the purpose of the claim petition and that no ITR was filed for the previous year.

2. The Court is not persuaded by the aforesaid arguments for the following reasons:-

(i) The injured-claimant, a 65 year old person, in his evidence by way of affidavit had deposed that:-

> *"3. That the above accident had occurred due to the fast, rash and negligent driving of Motor Cycle driven by the respondent No.1. The deponent was on bed upto 15th March, 2016 and could not attend his business. He is still under treatment as the injury has not healed properly as yet. Due to the insertion of the rod the size of his leg has shortened and he is not in the position to walk properly.*
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> *xxxx xxxx xxxx*
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> *8. That at the time of the accident the injured/deponent was aged about 65 years. He was running his shop and was earning around Rs.30,000/- per month. He could not attend his work from the date of accident till date due to injuries sustained in this accident because he cannot sit properly as he feels great pain and uncomfortability in folding and unfolding his leg. He has suffered great mental pain, shock and trauma. The deponent has incurred a huge amount of Rs.6,00,000/- on his treatment and he is still under treatment and is not sure as to when he will fully recover. As submitted hereinabove concerned doctor and the hospital has advised the deponent to undergo one more operation as after the healing of the wound and fracture union because the rod and other prosthetics inserted inside the bone will have to be removed and for that matter the deponent will have to go one more operation which will cost about 2.5 lakhs and complete bed rest for 2-3 more months. Due to immovability the health of the deponent has drastically deteriorated and he has suffered financial crunch. The loss suffered by the deponent cannot be computed in pecuniary terms."*

3. In his cross-examination, nothing has come about to shake his testimony that he was in agony and constant discomfort in his daily routine, and that he had attended his work, with a rod being inserted in his leg, which had been shortened on account of the accident and because of that he was not able to walk properly. There is nothing on the record to disbelieve his long recuperation.

4. The impugned order has dealt with the issue as under:-

> *"10 (a) Loss of Income:*
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> *(i) As already stated that petitioner remained under treatment till 10.11.2017 and he was advised for 04 weeks bed rest on 05.06.2017; it means that he may not be able to join his work atleast till 05.07.2017. It means that petitioner was not able to join his work atleast for 16 months. Accordingly, loss of income for 17 months amounting to Rs.4,65,664/- (Rs.27,392/- X 17) is awarded to him towards loss of income."*

5. The Court finds no reason to interfere with the aforesaid finding. The contention in this regard is rejected.

6. Secondly, non-filing of the ITRs for the earlier years cannot be held against the injured-claimant. On a query being put to the learned counsel for the appellant, whether the claimant had been filing the ITR for subsequent years too, the answers is in the affirmative. This conduct of the claimant would only show that he is a law abiding citizen and has been filing his income tax returns regularly. Therefore, no case is made out to disregard his ITR for Assessment Year 2016-17, which covered the Financial Year 2015-2016 i.e. 01.04.2015 till 30.03.2016, during which the accident happened i.e. on 14.02.2016.

7. There is no merit in the appeal. It, alongwith pending applications, is dismissed.

8. The statutory deposit of Rs.25,000/-, alongwith interest accrued thereon, be refunded to the insurance company.

NAJMI WAZIRI, J.

AUGUST 28, 2019
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