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

% *Decided on: 21.01.2020*

\+ MAC.APP. 543/2015 & CM APPL. 12210/2015

ICICI LOMBARD GENERAL INSURANCE CO. LTD.

..... Appellant

Through: Mr. A.K. Soni, Adv.

versus

RAJENDRA MAHATO & ORS ..... Respondents

Through: Mr. S.N. Parashar, Adv.
Mr. J.P.N. Shahi, Adv.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation dated 25.04.2015 passed by the learned MACT in MAC Suit No. 676/09, on the ground that it has erred in assessing the functional disability of the injured to the equivalent degree of the physical disability i.e. 15%. It is the appellant's contention that the functional disability should not be assessed at more than 7% to 8%.

2. The injured/claimant was running a Paan shop. His vocation entails him to sit all day at his shop with his legs folded. Obviously, he has developed stiffness in the knee and left lower limb. He is unable to sit

comfortably in a certain position as he was prior to such injury. What has to be assessed is not the whole body disability but the functional disability of the body apropos the vocation which he was carrying out. Because of the disability in the left lower limb, he would not be able to sit for long hours at the "Paan Shop" with folded legs. In the circumstances, for the learned Tribunal to have assessed his functional disability at 15%, cannot be faulted. There is no cause for interference with the impugned order on this account.

3. The next contention is that compensation towards "loss of future prospects" granted @ 50% is erroneous in view of the dicta of Supreme Court in *National Insurance Co. Ltd. vs. Pranay Sethi* (2017) 16 SCC 680, since the injured/applicant was below 40 years of age at the time of the motor accident and because he was self employed**.** This contention is valid. The same shall be reduced to 40%.

4. The injured was 30 years of age at the time of the motor accident. Therefore, multiplier of 17 ought to have been made applicable instead of 16 in terms of dicta of the Supreme Court in *Sarla Verma and Ors. vs Delhi Transport Corporation and Anr.,* (2009) 6 SCC 121. In view of the above, the amount payable towards 'loss of earnings' shall be as under:-

> Rs. 3,633/- (minimum wages) x 12 (months) x 17 (multiplier) x 15/100 (15% functional disability) + 40% (loss of future prospects) = Rs. 1,55,638/-

5. Furthermore, the appellant seeks right of recovery against the owner of the vehicle. The Court would note that the owner of the offending vehicle, respondent no.3- Prithvi Raj, had not filed any reply to the claim petition.

Neither the driver nor the owner of the vehicle had presented any licence to prove the same. The insurer contends that the presumption would, therefore, be that they did not have a valid driving licence, and that the vehicle was being driven in breach of policy conditions. Mr. Shahi, the learned counsel for the respondent states that the police had seized the driving licence. He refers to the seizure challan dated 04.03.2008 bearing no. 311940 to the extent of the driving licence of Ramesh, S/o Bagh Singh, who was driving the vehicle RC TATA 407 bearing registration no. DL-1L-B- 6851. It was seized on 02.03.2008 apropos FIR No. 130/8 dated 12.03.2008. However, the number on the driving licence, place of issuance, its validity for the types of vehicles is not mentioned. The respondent/owner and the driver have not even bothered to put a copy of driving licence on record. They could not be deemed to have contested the case. The insurer will have the right of recovery. It is so granted against the owner of the vehicle. However, under the settled principle of pay and recover as laid down by the Supreme Court in *Manuara Khatun & Ors. vs Rajesh Kumar Singh & Ors.,* (2017) 4 SCC 796, the insurer will first pay the amounts to the beneficiary(ies) of the award and then will have the right to recover the monies from the owner of the vehicle.

6. The learned counsel for the appellant states that the entire awarded amount in terms of the impugned order has been deposited. Accordingly, let 50% of the awarded amount alongwith interest accrued thereon be released to the beneficiary(ies) of the award in terms of the scheme of the disbursement specified therein.

7. Since the appellant has succeeded partly in its appeal, the remaining amount along with corresponding interest accrued thereon be returned to the appellant along with statutory deposit and interest accrued thereon. The other amounts payable to the claimant shall be released to him right way.

8. The appeal is disposed-off in the above terms.

NAJMI WAZIRI, J

JANUARY 21, 2020
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