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HIGH COURT OF DELHI AT NEW DELHI

Decided on : 29th October, 2015

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MAC.APP. 246/2015 & CM APPL.4223/2015 (stay)

NATIONAL INSURANCE CO LTD Appellant

Through: Mr. Sanjay Rawat, Advocate.

Versus

BABU LAL & ANR Respondents

Through: Ms. Amandeep Kaur with Ms. Aishwarya
Saluja, Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. This is an appeal filed by the Insurance Company against the award passed by the learned Motor Accident Claims Tribunal, Central District, Delhi (MACT) in favour of respondent No.1 Babu Lal on 13.12.2014 in Suit No.27/13 titled *Sh. Babu Lal v. Sh. Lal Chand & Ors.*

2. Briefly stated the facts of the case are that the petitioner Babu Lal preferred a Claim Petition under Section 166 and 140 of the Motor Vehicles Act, 1988 for a compensation of Rs.40 lacs in respect of the injuries sustained by him in a motor vehicle accident which occurred on 27.09.2012. It was alleged by the injured Babu Lal that on 27.09.2012 at

about 8:00 p.m. respondent No.1 Babu Lal was driving his motorcycle bearing registration No.HR-35G-6783 and was going to village Sohau from Maehndergarh, Haryana and that when he had reached near village Duloth, PS Mahendergarh, Haryana, a car bearing registration No.HR-70A-4645 driven by one Lal Chand (respondent No.2) in a rash and negligent manner came at a very high speed from the opposite direction of the road. It hit the motorcycle of respondent No.1 as a consequence of which, respondent No.1 fell down and sustained grievous injuries because of which his right leg was amputated and the same was treated as a permanent disability of 80% in respect of right lower limb. Respondent no.1 was also confined to hospital as an indoor patient for more than a month. He had also suffered two fractures apart from the aforesaid permanent disability. He claimed compensation under various headings like, loss of future prospects, loss of wages, loss of amenities of life, pain and suffering, conveyance, medicines and treatment, special diet and disfigurement, etc.

3. The respondents therein filed its written statement and contested the claim. Respondent No.2 driver-cum-owner denied the very existence of the accident having been caused with his vehicle. So far as respondent

No.3 Insurance Company (appellant herein) is concerned, it took the plea that respondent No.1 Babu Lal himself was negligent in driving the motorcycle because of which accident took place, however, they admitted that the car of respondent No.2 was insured with them vide policy No.361402/31/11/6700004661 valid from 01.10.2011 to 30.09.2012 and thus was covered under the insurance at the time of the accident.

4. On the pleadings of the parties, the learned MACT framed the following issues:-

“i. Whether the petitioner had suffered grievous injuries in road traffic accident which took place on 27.09.2012 within the jurisdiction of PS Mahendergarh, Haryana due to rash and negligent driving of the vehicle registration No.HR-70A-4645 by Respondent No.1?

ii. Whether the petitioner is entitled to any compensation, if so, to what amount and from whom?

iii. Relief.”

5. Both the parties were given opportunity to adduce evidence. Respondent no.1 examined himself as the sole witness as PW-1. Respondent No.2 driver-cum-owner has also examined himself as R1W1. However, Insurance Company did not prefer to examine any witness and their evidence was closed.

6. After hearing the arguments, the learned MACT passed a total award of Rs.19,59,701/- under various heads, which are as under:-

<i>Sl. No.</i>	<i>Heads</i>	<i>Compensation awarded (in Rs.)</i>
1.	<i>Permanent disability of the Petitioner</i>	<i>15,61,997/-</i>
2.	<i>Medicines and Medical Treatment</i>	<i>23,468/-</i>
3.	<i>Loss of wages</i>	<i>54,236/-</i>
4.	<i>Loss of amenities of Life</i>	<i>1,00,000/-</i>
5.	<i>Pain and suffering</i>	<i>1,00,000/-</i>
6.	<i>Conveyance</i>	<i>10,000/-</i>
7.	<i>Special Diet</i>	<i>10,000/-</i>
8.	<i>Disfigurement</i>	<i>1,00,000/-</i>
	<i>Total</i>	<i>19,59,701/-</i>

7. The appellant-Insurance Company has challenged the present award mainly on the ground of quantum of future prospects and the loss of wages.

8. It is the contention of the learned counsel for the Insurance Company that the case of respondent No.1 (the injured) in the Claim Petition was that he was engaged as a driver in a private car where he was earning Rs.9,000/- per month. However, he had not placed on record any documentary proof of the fact that his income was Rs.9,000/- per month or that he was employed as a driver. It has come in evidence of respondent No.1 that he had studied upto 9th standard and because of this,

the learned MACT had taken respondent No.1 to be a non-Matriculate at the time of the accident, that is, on 27.09.2012 and his minimum wages were taken as Rs.7,748/- per month as the best wages on the basis of which the loss of future prospects and loss of wages, etc. were calculated.

9. The foremost contention of the learned counsel for the appellant is that the wages which has been taken by the learned MACT as Rs.7,748/- is not the correct quantum. It has been averred that the respondent no.1/ claimant has no nexus whatsoever with Delhi, as he possesses a driving license, ration card and voter identity card all bearing his residence as that of District Jhunjhunu, Rajasthan. Further he failed to prove the factum of his employment in Delhi. It has been contended that the aforesaid fact coupled with the fact that at the time of the accident the respondent no.1/ claimant was travelling to his native place in Rajasthan where the normal wages payable was clearly Rs 5,000/- which would considerably reduce the liability of the Insurance Company in case, the said amount is taken.

10. I do not subscribe to the submission made by the learned counsel for the appellant that the wages of respondent No.1 (the injured) have to be taken as Rs.5,000/- per month or any other figure less than the amount

of Rs.7,748/-, which is the minimum wages fixed by the appropriate Government. No doubt, respondent No.1 had stated that he was employed as a driver and was earning Rs.9,000/- per month but since he had failed to produce any evidence on that score and it had also come on record that he was a Non-Matriculate, therefore, there was no escaping from the fact that for the purpose of calculating the compensation, his wages were to be taken as minimum wages fixed by the appropriate Government which has been taken to be Rs.7,748/- by the learned MACT and rightly so. It is not the case of the appellant that the petitioner was not working as a driver at all. If the appellant herein wanted any amount to be taken as the actual wages or even minimum wages which were prevalent at that point of time then not only such a plea ought to have been taken by the appellant in the written statement but it ought to have been proved by them. This is a settled principle in civil law that a fact must not only be pleaded but must also be proved. In the instant case, neither the fact of applicability of lower wages, in the case of the petitioner, has been pleaded nor but it has been proved by any credible evidence by the Insurance Company, therefore, this is only a ploy to get the amount, which has been fixed by the learned MACT as the rightful compensation

payable to the injured, considerably reduced. This cannot be permitted to be done. I do not find that there is anything improper and illegal in the award which has been passed by the learned MACT in arriving at the figure of the compensation. I accordingly feel that the present appeal is without any merit and the same is dismissed.

11. Pending application also stands disposed of.

V.K. SHALI, J.

OCTOBER 29, 2015

vk/AD