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

Date of Decision: 17th May, 2016

\+ **MAC.APP. 58/2013**

NEW INDIA ASSURANCE CO. LTD. ..... Appellant

Through: Mr. P. Acharya, Adv. for Mr. Sameer Nandwani, Adv.

versus

RAJENDER PRASAD & ORS. ..... Respondents

Through: Mr. O. P. Mannie, Adv. for R-1.

AND

\+ MAC.APP. 432/2013

SH RAJENDAR PRASAD & ORS ..... Appellants

Through: Mr. O. P. Mannie, Adv.

versus

NEW INDIA ASSURANCE COMPANY LTD ..... Respondent

Through: Mr. P. Acharya, Adv. for Mr. Sameer Nandwani, Adv.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 15.12.2009, Rajender Prasad (the appellant in MAC Appeal no.432/2013), then aged 45 years, employed as mate pipe fitter with

Garrison Engineer (Central) MES, Delhi Cantt. New Delhi was crossing National Highway-8 on foot when he was hit by a truck bearing registration no.HR-55B-6392 (the offending vehicle) statedly driven negligently. As a result, he suffered injuries and had to be hospitalized for treatment, during which his left big toe was amputated. He instituted an accident claim case (MACP no.220/11/2010) on 22.02.2010 seeking compensation under Sections 166 & 140 of the Motor Vehicles Act, 1988 (the MV Act), impleading New India Assurance Co. Ltd. (appellant in MAC Appeal no.58/2013) as one of the party respondents, it having admittedly issued an insurance policy covering third party risk in respect of offending vehicle for the period in question, this in addition to driver and owner of the offending vehicle.

2. The tribunal held inquiry and on that basis returned a finding, by judgment dated 06.11.2012, upholding the case of the claimant about injuries having been caused to him due to negligent driving of the offending vehicle. It assessed the compensation in the sum of ₹4,36,626/- and awarded the same with interest 7.5% per annum in his favour, directing the insurer to pay, the award having been calculated thus:-

For medicines and Treatment	:₹41,746/-
For loss on account of permanent disability	:₹1,79,923/-
Loss of income on Account of leaves	:₹ 99,957/-
Pain and suffering	:₹ 40,000/-
Conveyance & special diet	:₹ 20,000/-
Loss of amenities	:₹ 30,000/-
Loss of disfigurement	

Of head	:₹ 25,000/-
Total	:₹4,36,626/-

3. The insurer having been burdened with the liability to pay the compensation has come up in appeal (MAC appeal no.58/2013) questioning the judgment and award of the tribunal submitting that since the claimant was crossing the road without taking care of the oncoming traffic, not having used a zebra crossing, the element of contributory negligence should have been factored in. It is also the submission of the insurer that the claimant was a government employee and there being no evidence that he had suffered in loss of employment or income, the award towards loss of future income on account of disability assessed to the extent of 7.5% was uncalled for.

4. *Per contra*, the claimant, by his appeal (MAC appeal no.432/2013), submitted that the injuries inflicted on him due to accident had included fractured scalp bone required two surgical procedures undergone in May and July 2013, post decision by the tribunal, which have left him disfigured for remainder of his life, the scalp bone having became de-shaped. The claimants submits that the tribunal was unable to appreciate the gravity of the injuries and their after-effect and consequently the awards under non-pecuniary heads of damages are inadequate. It is also his submission that on account of further surgical procedures undergone, in the context of the head injury he had incurred additional expenditure on medical treatment to the extent of Rs.90,189/- and, for such purposes he had remained on additional medical leave for 31 days, for which, he prays for suitable damages to be awarded. He also prays that additional award be accorded towards attendant

charges and the compensation for pain and suffering, besides loss of amenities of life as indeed for disfigurement to be taken care of.

5. Having heard both sides and having gone through the tribunal's record, this court finds no substance in the plea of insurer about contributory negligence. Noticeably, the evidence of the claimant about sequence of events leading to the occurrence has remained virtually challenged/unchallenged. The driver of the offending vehicle was not called in the witness box to prove any negligence on the part of the claimant. The learned counsel for the claimant was unable to show from the record any material which could disclose that there was a zebra crossing available at the scene of occurrence and which was not used by the claimant. In these circumstances, there is no good reason why the finding of negligence on the part of driver of the offending vehicle alone should be interfered with.

6. The contention of the insurer that there was no immediate loss of employment or earnings due to permanent disability to the extent of 7.5% (on account of amputation of the big toe) is correct. In this view, the loss of future income on account of loss of disability could not have been calculated with reference to the date of accident. The claimant being in government service would ordinarily superannuate at the age of 60 years. Thus, loss of future income due to disability ought to be calculated with reference to the age of 60 years and, therefore, on the multiplier of 9.

7. On his request, the claimant was allowed to lead additional evidence under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (CPC), during the pendency of his appeal (MAC appeal no.432/2013). During the said opportunity, he examined himself (as AW1) besides examining Dr. Rakesh

Naithani (AW2) Sr. Consultant of Neuro-Surgical Department of Naithani Neuro and Multispecialty hospital, Rewari, Haryana and Om Prakash (AW3), Office Superintendent in the office of MES Garrison Engineer (South) Shankar Vihar, Delhi Cantt., New Delhi. AW2 is the Neuro Surgeon who had carried out the two surgical procedures in May and July, 2013 for repairing to the extent possible the damage caused by the head injuries. The said doctor has proved that bone defect caused by the head injuries was put to the procedure called cranio-plasty wherein it was covered by artificial acrylic mould. AW2 proved that head bone of the claimant has become deformed and de-shaped and this condition is to persist throughout his remainder life. Though he also stated that head injuries have resulted in loss of hearing and memory loss, there is admittedly no effort made to obtain further disability certificate on basis of specialist medical opinion in such regard.

8. Additional evidence of AW1 read with AW3 proves that the claimant had to take 31 days medical leave for the two additional surgical procedures. The gross salary during relevant period being ₹28,592/-. The said amount deserves to be granted additionally on account of loss of leave. Further, AW1 has proved by documents (Ex.AW1/1 to Ex.AW1/4), that he had incurred additional medical expenditure in the sum of ₹90189/-, for purpose of two operations carried out by AW2 in 2013.

9. For loss of income on account of permanent disability to the extent of 7.5%, on the then emolument of ₹15378/-, on the multiplier of 9, the loss of future income is recomputed as (15378x7.5x12x9/100) ₹1,24,562/-, rounded off to ₹1,25,000/-. The loss of income on account of leave was calculated

by the tribunal at ₹99,957/-. On account of additional leave, taken discussed above, the award under said head would now come to (99,957+28,592) ₹1,28,549/-, rounded off to ₹1,29,000/-. The tribunal had granted ₹41,746/- towards medical expenditure. Taking into account the additional expenditure incurred in the post-decision surgical procedures, the total compensation under this head is (90,189+41,746) ₹1,31,935/- rounded off to ₹1,32,000/-.

10. Having regard to the fact that the misery on account of injuries has continued for the claimant and he has undergone two further surgical procedures, the award under the head of pain and suffering is increased to ₹1,00,000/-, the damages for conveyance and special diet are increased to ₹30,000/-, the award on account of loss of amenities is increased to ₹50,000/- and damages for disfigurement is increased to ₹50,000/-. Thus, the total compensation in the case comes to (1,32,000 + 1,25,000 + 1,29,000+1,00,000+30,000+50,000+50,000) ₹6,16,000/-.

11. The award is increased accordingly.

12. Following the consistent view taken by this Court [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*], the rate of interest is increased to 9% per annum from the date of filing of the petition till realization.

13. By order dated 21.01.2013 (in MAC appeal no.58/2013), the insurance company had been directed to deposit the entire awarded compensation with up-to-date interest with the Registrar General and out of such deposit 50% was allowed to be released, the balance kept in fixed

deposit receipt with UCO Bank, Delhi High Court branch. The Registrar General shall release the balance as well. The insurer shall deposit the balance of its liability under the modified award with the tribunal within 30 days for it to be released to the claimant.

14. The statutory deposit, if made, shall be refunded.

15. Both the appeals are disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 17, 2016
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