

\$~10 & 11

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

Date of Decision: 23.05.2016

+ **MAC.APP. 1199/2013**

RAJARAM PRASAD Appellant
Through Mr. S N Parashar, Adv.

versus

SULTAN & ORS Respondent
Through Ms. Neerja Sachdeva, Adv. for R-3

+ **MAC.APP. 205/2014**

DELHI TRANSPORT CORPORATION Appellant
Through Ms. Avnish Ahlawat with Ms. Latika Chaudhary, Adv.

versus

UNITED INDIA INSURANCE COMPANY LTD Respondent
Through Ms. Neerja Sachdeva, Adv. for R-3

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Rajaram Prasad (appellant in MAC.APP.No.1199/2013), who is about 38 years old, self-employed in business, suffered injuries in motor vehicular accident that occurred on 08.07.2011 on account of negligent driving of bus bearing No.DL 1PC 9683 (the offending vehicle) of Delhi Transport

Corporation (DTC), driven by its employee Sultan (first respondent in MAC.APP.No.1199/2013). He was rendered permanently disabled on account of consequent amputation of his right upper limb above elbow. He filed an accident claim case (MACT No.276/11) before the motor accident claims tribunal (tribunal) on 10.08.2011, impleading the said Sultan (driver), DTC (appellant in MAC.APP.No.205/2014) and United India Insurance Co. Ltd. (insurer) as respondents, the last party having admittedly issued an insurance policy against third party risk covering the period in question in respect of the offending vehicle. On the basis of inquiry held, the tribunal, by judgment dated 08.10.2013, upheld the case about injuries and permanent disability having been suffered on account of accident caused due to negligent driving of the offending vehicle. Compensation in the sum of ₹15,77,836/- was awarded with interest at 7.5% per annum from the date of filing of the petition till realization (subject to adjustment of the amount paid as interim compensation), it having been calculated thus :

<i>Sl.No.</i>	<i>On Account of</i>	<i>Amount (Rs.)</i>
1	<i>Towards medical expenses.</i>	<i>Rs.36,987/-</i>
2	<i>Towards six months salary</i>	<i>Rs. 31,614/-</i>
3	<i>Towards future loss of income</i>	<i>Rs.12,09,235/-</i>
4	<i>Towards non pecuniary heads</i>	<i>Rs.3,00,000/-</i>
	<i>Total</i>	<i>Rs. 15,77,836/-</i>

2. The insurer had admitted the liability to indemnify but set up a defence that the driving license of Sultan (driver) had been obtained surreptitiously in violation of the laws and rules. The tribunal considered this plea of the insurer and returned a finding that the driving license though confirmed to have been issued by licensing authority at Nagaland was to be treated as fake since it had been admitted that the driver had never visited

the said authority nor had undergone a test anterior to its issuance. The insurance company was directed to pay the compensation but granted rights to recover against Sultan and DTC.

3. The claimant by his appeal (MAC.APP.No.1199/2013), has submitted grievance that though he had proved his income by submission of income tax returns (ITRs) for the assessment year 2002-03 upto 2010-11, the tribunal declined to accept the said proof and proceeded to assess the loss of income on account of loss of dependency assuming the minimum wages of matriculate payable in the state of Uttar Pradesh. This, in the submission of the claimant, was improper and has resulted in inadequate award of compensation. The claimant further submits that the lumpsum of Rs.3 lakh under the non-pecuniary heads of damages and the rate of interest at 7.5% per annum is inadequate. He also points out that though he had led evidence to prove that an artificial limb can be arranged from a company dealing in such systems, as proved on record through quotations (Ex.PW3/B & C), the benefit of the same was not even considered by the tribunal.

4. DTC, by its appeal (MAC.APP.No.205/2014), on the other hand, argues that the finding that the driver may have obtained the driving license surreptitiously or by improper means from the licensing authority at Nagaland could not have been used to allow the insurer to get away with the indemnity clause. It submits that, as a responsible employer, it had exercised due diligence by obtaining a copy of the driving license of the driver before engaging him, it admittedly being a document actually issued by the licensing authority at Nagaland and, therefore, the recovery rights granted against it are unfair dispensation.

5. Having heard the learned counsel on all sides and having gone through the tribunal's record, this Court agrees with the submission of the claimant that his income has not been properly assessed. It is noted that though the claimant had proved the ITRs for the period 2002-03 upto 2011-12 by documents (Ex.PW1/60 to 87), the tribunal was not impressed for the reason these returns do not indicate the nature of business. The tribunal did not notice that the forms in which the ITRs were submitted to the income tax department, contain no column wherein the nature of business is to be declared. The claimant had appeared in evidence as PW1 affirming on oath the necessary facts by his affidavit (Ex.PW1/A) testifying, *inter alia*, that he had been working for gain as an artisan shaping all kinds of gems and jewels for manufacture of jewellery items. In absence of any proof to the contrary, his unchallenged testimony to this effect could not have been disbelieved.

6. The ITR for the assessment year 2011-12 (Ex.PW1/85-87) is, however, kept out of consideration because it was submitted after the accident. The ITRs for the preceding periods beginning for assessment year 2002-03 (Ex.PW1/60-62) and ending with that for assessment year 2010-11 (Ex.PW1/82-84) show progressive rise in income from Rs.49,870/- per annum to Rs.1,92,892/- per annum. There is no reason why the last said declared income for assessment year 2010-11 could not have been taken as the benchmark for making assessments of loss of earnings due to disability. In the face of such irrefutable evidence, the benefit of future prospects of increase to the extent of 50% also deserved to be factored in. [see judgment dated 28.03.2016 in MAC.APP. 548/2013 *United India Insurance Co. Ltd. v. Kamla & Ors.*]

7. The income for calculating the loss of earnings is, therefore, computed as $(1,92,892 \times 150 \div 100)$ ₹2,89,338/-.

8. The disability certificate dated 25.11.2011 (page 419 of the tribunal's record) shows that the medical board of Lal Bahadur Shastri Hospital, Government of NCT of Delhi had assessed the claimant to be a case of physical disability to the extent of 85% in relation to the right upper limb. The tribunal accepted the case to be one of functional disability to the extent of 85%. This conclusion has not been challenged by any of the respondents. Even otherwise, it seems to be in consonance with the percentage of loss of earning capacity in such cases as is specified in the first schedule to the Employees' Compensation Act, 1923. Thus, the loss of future earnings on account of permanent disability to the extent of 85% in the case of the claimant (aged 38 years) on the multiplier of 15 is calculated as $(2,89,338 \times 85 \div 100 \times 15)$ ₹36,89,059.50 rounded off to ₹36,90,000/-.

9. The tribunal had awarded loss of income during the period of treatment at ₹31,614/-, on the basis of minimum wages. Having regard to the conclusions reached above, the loss of income for the period of six months of treatment is recomputed as $(1,92,892 \div 2)$ ₹96,446/- rounded off to ₹97,000/-.

10. The tribunal's record shows that the claimant had led evidence to prove that there is a possibility of he having the benefit of an artificial endolite mayo electric hand system. Two quotations, one (Ex.PW3/B) requiring an expenditure of Rs.5,61,900/- and the other (Ex.PW3/C) wherein expenditure would be 1,19,900/- were submitted through Ms. Ekta (PW3), Prosthetist and Orthotist of M/s Endolite India Ltd. The learned counsel for the claimant submits that the artificial limb described in the second

document (Ex.PW3/C) would suffice. It is noted that the quotation given in December, 2012 was valid for a period of three months. Having regard to the period since undergone and the fact that equipments of this nature generally require regular maintenance and upkeep or even replacement, as pressed by the counsel for the claimant, provision for finance for two such equipments (one for immediate use and the other for replacement in future) would suffice. In these circumstances, assuming the present cost to be in the region of ₹1,50,000/-, the award of ₹3 lakhs is granted for artificial limb.

11. In the considered view of this Court, the lumpsum award of non-pecuniary damages in the sum of ₹3 lakh was indeed deficient. Having regard to the nature of injuries suffered and their effect on the quality of life of the claimant, compensation in the sum of ₹1,50,000/- toward pain & suffering, ₹1,50,000/- towards loss of amenities of life and ₹1,00,000/- on account of disfigurement are awarded. Putting all the above mentioned heads together, along with ₹36,987/- calculated as medical expenses, the total compensation payable in the case comes to (36,90,000 + 97,000 + 3,00,000 + 1,50,000 + 1,50,000 + 1,00,000) ₹45,73,987/- rounded off to ₹45,74,000/-.

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. The award is modified accordingly.

14. The insurance company is directed to deposit the enhanced portion of the compensation including on account of increase in the rate of interest with the tribunal within 30 days of this judgment. Upon such deposit being

made, the same shall be released to the claimant in the form of four fixed deposit receipts of equivalent amounts, to be kept in a nationalized bank of his choice with right to draw periodical interest from three of them. The fourth fixed deposit receipt shall be kept aside to be availed by the claimant as and when he requires to procure the artificial limb or for purposes of its maintenance or upkeep or replacement in future. For purposes of release of amount towards that end, the claimant will have the liberty to approach the tribunal supporting his request with suitable advice/prescription for the necessary directions to be issued.

15. The grounds on which recovery rights were granted against DTC cannot be upheld. The driver may have adopted improper means to secure a driving license. The fact, however, remains that the driving license was genuine and, therefore, the insured cannot be made to suffer on such account. The direction in the impugned judgment about recovery rights are, thus, set aside.

16. By order dated 21.07.2015 (in MAC.APP.No.205/2014), DTC had been directed to deposit 50% of the awarded amount with the Registrar General which was ordered to be kept in fixed deposit receipt for a period of six months. The said deposited amount shall be refunded to DTC with statutory deposit, if made.

17. Both appeals are disposed of in above terms.

(R.K. GAUBA)
JUDGE

MAY 23, 2016
VLD