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

Date of Decision: 18th April, 2016

\+ **MAC.APP. 197/2014**

ICICI LOMBARD GENERAL INSURANCE
CO. LTD. …….. Appellant

Through: Mr. Pankaj Gupta, Adv.

versus

AMOD KUMAR & ORS ..... Respondents

Through: Mr. Manu Shahalia, Adv. for R-1.

\+ **MAC.APP. 116/2015**

AMOD KUMAR & ORS …….. Appellants

Through: Mr. Manu Shahalia, Adv.

versus

ICICI LOMBARD GENERAL INSURANCE
CO. LTD. ..... Respondent

Through: Through: Mr. Pankaj Gupta, Adv.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Amod Kumar (appellant in MAC Appeal No. 116/2015) suffered injuries on 15.09.2012 while crossing the road when he was hit by truck bearing registration No. HR 38K 0664, statedly driven in rash manner by

Ravinder. The injuries sustained included crushed left leg which had to be amputated rendering him permanently disabled, the disability having been certified (Ex.PW-1/8) to be to the extent of 80%. He filed an accident claim case (Suit No. 638/2012) seeking compensation under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) on 15.12.2012 impleading Ravinder (the driver) and Sarabjeet Singh (the owner of the offending vehicle) as first and second respondents, in addition to ICICI General Insurance Company Ltd. (appellant in MAC appeal No. 197/2014) as the third respondent, it admittedly being the insurer against third party risk in respect of the offending vehicle for the period in question. The motor accident claims tribunal (the tribunal) by judgment dated 26.09.2013 held that the accident had occurred due to rash driving of the truck and awarded compensation with interest at 9% per annum, calculating it thus:-

1.	Compensation for treatment expenses	₹ 4692/-
2.	Compensation for pain & suffering	₹ 1,00,000/-
3.	Compensation for special diet & conveyance	₹ 45,000/-
4.	Compensation for loss of income during treatment	₹ 50,000/-
5.	Compensation for loss of future income	₹ 12,88,812/-
6.	Compensation for loss of amenities and enjoyment of life	₹ 1,00,000/-
7.	Attendant charges	₹1,00,000/-
8.	Compensation for loss of marriage prospects	₹ 50,000/-
9.	Compensation for disfigurement	₹ 50,000/-
10.	Compensation for future medical expense	₹ 1,50,000/-
	Total	**₹ 19,38,504/-**

2. Before the tribunal, the insurer had taken the plea that there was breach of terms and conditions of the insurance policy as the truck was plied on public roads in Delhi without a valid permit inasmuch as the permit shown relates to the State of Haryana. It was also submitted that the vehicle was not roadworthy, the driver and owner having relied on a fitness certificate which, upon verification, was found to be fake. The driver and owner did not participate in the inquiry and would not lead any evidence in defence. The insurance company examined Vivek Yadav (R3W1) Manager (Legal) to prove the above-mentioned contentions. The tribunal, however, declined to uphold any breach of terms and conditions of the insurance policy and, thus, rejected the plea for recovery rights to be granted.

3. The insurer has come up in appeal (MAC Appeal No. 197/2014) pressing for recovery rights. By his appeal (MAC Appeal No. 717/2016), Amod Kumar (the claimant) seeks enhancement of the compensation on the ground that the factor of future increase in the minimum wages on the basis of which loss of future income has been assessed deserved to be factored in. He also seeks enhancement of the compensation towards future medical expenses.

4. In the case reported as *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, Supreme Court, *inter-alia*, ruled that the element of future prospects of increase in income will not be granted in cases where the deceased was "self employed" or was working on a "fixed salary". Though this view was affirmed by a bench of three Hon'ble Judges in *Reshma Kumari & Ors. Vs. Madan Mohan & Anr.*, (2013) 9 SCC

65, on account of divergence of views, as arising from the ruling in *Rajesh & Ors. vs. Rajbir & Ors.*, (2013) 9 SCC 54, the issue was later referred to a larger bench, *inter-alia*, by order dated 02.07.2014 in *National Insurance Company Ltd. vs. Pushpa & Ors.,* (2015) 9 SCC 166.

5. Against the above backdrop, by judgment dated 22.01.2016 passed in MAC Appeal No. 956/2012 (*Sunil Kumar v. Pyar Mohd.*), this Court has found it proper to follow the view taken earlier by a learned single judge in MAC Appeal No. 189/2014 (*HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi & Ors.)* decided on 12.1.2015, presently taking the decision in *Reshma Kumari (Supra)* as the binding precedent, till such time the law on the subject of future prospects for those who are "self-employed" or engaged in gainful employment at a "fixed salary" is clarified by a larger bench of the Supreme Court.

6. The ground on which the claimants seeks enhancement cannot be upheld. The income of the claimant was assessed, in absence of proper proof, on the basis of minimum wages (Rs.7,020/-). In above facts and circumstances, the loss of future income has been rightly calculated without the element of future prospects being added.

7. It is noted that though the disability certificate showed the extent of disability to be 80% in relation to the left lower limb, but the tribunal has assessed it to be 90% as the loss of earning capacity and applied the multiplier of 17, awarding the amount towards loss of future income. On being asked, the learned counsel for the claimant fairly conceded that no evidence was led to show future medical expenses. In these circumstances, the award granted by the tribunal on this score cannot be faulted.

8. Even if the fact that the permit was only with regard to the State of Haryana was to be ignored, the fact that the vehicle was not roadworthy inasmuch as it was being plied on public roads on basis of fake fitness certificate justifies the plea of the insurer about breach of terms and conditions of the insurance policy. Therefore, the appeal of the insurance company must be upheld. Whilst it has been ready and willing to satisfy the award of compensation granted in favour of the third party, it is entitled to recovery rights against the owner (insured).

9. The appeal of the claimant is dismissed while the appeal of the insurer is allowed. It is granted right to recover the compensation paid to the claimant in this case from the owner (insured) in respect of the offending vehicle by appropriate proceedings before the tribunal.

10. By order dated 3rd March, 2014, the insurance company had been directed to deposit the entire awarded compensation with upto date interest with the tribunal whereupon 80% was allowed to be released. The tribunal shall release the balance to the claimant.

11. Statutory deposit, if made by the insurance company, shall be refunded.

12. The appeals are disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 18, 2016
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