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

Date of Decision: 29th January, 2016

+ **MAC.APP. 365/2010**
NATIONAL INSURANCE COMPANY LTD

..... Appellant
Through Mr. Manoj Ranjan Sinha and Ms.
Arpita Kumar, Advs.

versus

RAM KUMAR & ANR

..... Respondents
Through Mr. Kapil Gupta, Adv. for Ram
Kumar
Ms. Rupika Singh and Mr.
Navneet Goyal, Advs. for R-2

MAC.APP. 390/2015
RAM KUMAR

..... Appellant
Through Mr. Kapil Gupta, Adv.

versus

NATIONAL INSURANCE CO P LTD & ANR

..... Respondents
Through Mr. Manoj Ranjan Sinha and Ms.
Arpita Kumar, Advs.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Both these appeals are directed against judgment dated 25.03.2010 of Motor Accident Claims Tribunal (“the Tribunal”)

whereby the claim case of Ram Kumar (appellant in MAC.APP.No.390/2015) for compensation on account of injuries suffered in motor vehicular accident that occurred on 16.03.2003 in the area of cremation ground at Mehrauli Fatehpur Road, village Fatehpur Beri, New Delhi was decided and award was made for payment of ₹9,34,280/- as compensation. By subsequent order dated 25.05.2010, the Tribunal corrected the award and granted compensation in the sum of ₹9,69,280/-.

2. The motor vehicle which had caused the accident was admittedly insured with National Insurance Company Ltd. which was impleaded as a respondent before the claims Tribunal and which party is now in appeal (MAC.APP.365/2010).

3. Whilst the claimant seeks enhancement, the insurance company assails the impugned judgment and award, as later corrected, questioning the calculations mainly on the ground that the disability to the tune of 46% has been wrongly treated as relatable to the whole body and future prospects have been wrongly factored in for calculating the income loss.

4. Both sides have been heard at length. The record has been perused.

5. The contention of the insurance company with regard to the disability cannot be accepted in view of the fact that the disability suffered was on account of anterior dislocation of the left hip which had initially been assessed to have rendered him physically impaired in that limb to the extent of 92%. The Tribunal took into account the medical opinion given by Dr. Namit Saraf (PW-4) about the possibility of the disability being eventually reduced by 50% and, thus, calculated the

functional disability at 46% which cannot be faulted.

6. The claimant was unable to prove strictly the income of ₹6,000/- as claimed in the petition. Thus, the Tribunal was constrained to go by the minimum wages for skilled workers and adopted the benchmark of ₹3,210/- per month as prevailing at that time. In calculating the loss of income, it, however, also took into account the possibility of future prospects, calculating the income by adding 50% probable increase.

7. 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 SCC166.

8. 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. Lalita 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. This

applies to the matter at hand because the claimant here pleaded about gainful employment at a fixed salary and has not led any evidence showing the salary was subject to any periodic increase.

9. In above view, the method of calculation by the Tribunal cannot be accepted. Discounting the possibility of future prospects, the total loss of income, thus, is recomputed as $(3210 \times 12 \times 18 \times 46/100)$ ₹3,18,945/-.

10. The claimant, on the other hand, submitted grievance that the entire cost of treatment was not duly compensated. The claimant in his appeal has raised several grievances about he having been short-changed with regard to expenditure on medicines, attendants, conveyance, special diet etc. But, at the hearing, it has been fairly submitted by his counsel, on instructions, that the appeal of the claimant is pressed only with regard to the deficiency in the award on the expenditure towards medicines.

11. The learned counsel for the insurance company fairly concedes that the bills produced before the Tribunal showed an expenditure of ₹2,86,576/- as against which only ₹2,60,860/- was granted for no just or sufficient reason. In these circumstances, the award needs to be increased by $(₹2,86,576 - ₹2,60,860)$ ₹25,716/-, on account of expenditure on medicines.

12. On the other hand, the award on loss of income including future loss needs to be reduced by $(₹4,78,420 - ₹3,18,945)$ ₹1,59,475/-. In the result, the total award needs to be reduced by $(₹1,59,475 - ₹25,716)$ ₹1,33,759/-.

13. Resultantly, the award of compensation is reduced from ₹9,69,280/- to ₹8,35,521/- rounded off to ₹8,36,000/-. Needless to add,

the award, thus made by this Court in appeal shall carry interest in terms of the directions in the impugned award and shall be payable and arranged to be made available in terms of directions in the impugned judgment.

14. In terms of orders dated 03.06.2010 and 25.10.2010 passed in the appeal of the insurance company, the entire compensation awarded by the Tribunal through the impugned judgment was deposited. By order dated 07.04.2011, 75% of the said deposit was released to the claimant. The Registrar General shall calculate the amount now payable in terms of this judgment to the claimant and release the balance in terms of above mentioned directions, refunding the excess to the insurance company.

15. Statutory deposit, if made, shall be refunded.

16. Both appeals stand disposed of in above terms.

R.K. GAUBA
(JUDGE)

JANUARY 29, 2016
VLD