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

Date of Decision: 18th February, 2016

+ **MAC.APP. 427/2008**

ORIENTAL INSURANCE CO.LTD. Appellant

Through: Mr. Pradeep Gaur & Mr. Amit Gaur,
Adv.

versus

SUSHIL GOEL & ORS Respondents

Through: Mr. Nitinja Chaudhary, Adv. for R-1

+ **MAC.APP. 434/2008**

SUSHIL GOEL Appellant

Through: Mr. Nitinja Chaudhary, Adv.

versus

ORIENTAL INSURANCE COMPANY LTD. & ORS ...Respondents

Through: Mr. Pradeep Gaur & Mr. Amit Gaur,
Adv. for R-1

+ **MAC.APP. 454/2008**

ORIENTAL INSURANCE CO.LTD. Appellant

Through: Mr. Pradeep Gaur & Mr. Amit Gaur,
Adv.

versus

RITU GOEL & ORS Respondents

Through: Mr. Nitinja Chaudhary, Adv. for R-1

+

MAC.APP. 464/2008

RITU GOEL

..... Appellant

Through: Mr. Nitinjya Chaudhary, Adv.

versus

ORIENTAL INSURANCE COMPANY LIMITED & ORS

..... Respondents

Through: Mr. Pradeep Gaur & Mr. Amit Gaur,
Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 18.08.1996, Sushil Garg was driving maruti zen car bearing no.DL-3CH-2355 on way from Mount Abu to Delhi. His wife Ritu Goel, children and some family members were also travelling with him. At about 03:00 PM, the car was involved in a collision with truck bearing registration no.DL-1GA-2761 (the offending vehicle) which statedly was driven in a rash/negligent manner and had come in the wrong lane from the opposite side. Both Sushil Goel & his wife Ritu Goel suffered injuries. Claim petitions under Sections 166 & 140 of Motor Vehicles Act, 1988 (the MV Act) were presented by each of them in the motor accident claims tribunal (the tribunal), registered as suit nos.1581/2000 & 1571/2000, on 30.04.1997. Balwinder Singh and Narender Singh (described as the driver and owner of the offending vehicle) were impleaded as third and second respondents respectively in the said claim cases. It was conceded that the offending

vehicle was insured against third party risk with Oriental Insurance Company Ltd. (impleaded as first respondent in the claim petitions).

2. Both, the driver and owner did not participate in the proceedings inspite of notice and, thus, were set *ex parte*. The insurance company filed its written statement taking, *inter alia*, identical preliminary objections that the insured must prove himself to be the registered owner of the vehicle and further fact that the driver was having a valid and effective driving license and was not disqualified from driving at the time of accident.

3. Both petitions were inquired into. During the course of inquiry, the two claimants led evidence. The petitions were decided by common judgment passed by the tribunal on 02.04.2008 awarding compensation in the sum of ₹1,61,451/- in favour of Sushil Goel and ₹83,194/- in favour of Ritu Goel. The tribunal directed levy of interest at the rate of nine percent (9%) per annum on the said amount of compensation and directed the insurance company to pay the awarded amount within a period of 30 days, failing which rate of interest would stand enhanced to twelve percent (12%) p.a. for the period of delay.

4. The insurance company filed appeals (MAC appeal 427/2008 in the claim petition of Sushil Goel and MAC appeal no.454/2008 in claim petition of Ritu Goel) and at the hearing presses only for recovery rights against the owner and driver of the offending vehicle with the contention that the driver was not holding a valid or effective license. The claimants, on the other hand, have come up with their respective appeals (MAC appeal no.434/2008 in the claim petition of Sushil Goel and MAC appeal no.464/2008 in case of

Ritu Goel) expressing grievances about compensation awarded contending that medical expenses have not been properly computed, the loss of income has not been correctly worked out and the award of compensation under non-pecuniary heads of damages is on the lower side.

5. In both cases, during the course of inquiry, the respective claimants relied upon income tax returns for the assessment year 2004-05. It is stated that Sushil Goel was working as one of the directors of M/s Spa Electrodes Pvt. Ltd., Shahibabad, District Ghaziabad, UP, getting remuneration of ₹5,000/- per month besides other perks. The document (Ex.PW1/32) affirming the said status of the claimant, as issued by the Registrar of Companies was relied upon, the copy of income tax return having been submitted as Ex.PW1/33. Similarly, in the case of Ritu Goel, it was claimed that besides her obligation as housewife, she was engaged in business and was also assessed to income tax. No documentary evidence with regard to her qualifications was submitted.

6. The tribunal did not accept the above-said claims and felt constrained to adopt the minimum wages prevalent at the time of accident to assume notional income. In case of Sushil Goel, it having been shown to the satisfaction of the tribunal that he was a graduate (Ex.PW1/28 to Ex.PW1/32), having regard to the minimum wages for graduates at ₹2409/- per month prevalent at that point of time, the notional income of ₹2500/- per month was adopted. Since no income proof as to the educational qualifications of Ritu Goel was submitted, her notional income was assessed at ₹1677/- per month, it being the amount of minimum wages payable to an unskilled worker. It is the contention of the claimants in their respective

appeals that their claim as to the income shown by the income tax return for the assessment year 2004-05 should have been accepted.

7. Having given considered thoughts to the submissions made, this court does not find any merit in the contentions raised.

8. The income of the claimants had to be assessed with reference to the date of accident (18.08.1996). The income for the financial year eight years thereafter cannot be of any consequence or relevance. In the given facts and circumstances, the tribunal took the correct view by adopting aforementioned notional income as benchmark in respect of the two cases.

9. The appellant Sushil Goel is aggrieved with award of medical expenses to the tune of ₹99,451/- on the ground that having regard to the multiple injuries suffered by him which include compound fracture of right leg, and the period of treatment, medical expenses should have been considered on the higher side and allowances made for future medical expenses. Similarly, in the case of Ritu Goel, the grievance is expressed about reimbursement of medical expenses having been restricted to ₹28,132/- ignoring the medical expenses that would have actually been required for prolonged treatment she had to undergo on account of multiple injuries suffered that included fracture of right femur shaft and Zygoma.

10. It is noted that the tribunal found that the medical expenses have been proved by claimant Sushil Goel in the total sum of ₹93,392/- alongwith one outdoor bill of ₹250/-. The tribunal enhanced it by a further sum of about ₹6,000/- to raise it ₹99,451/-. Similarly, in the case of Ritu Goel, the bills for medical expenses that have been proved were only to the tune of

₹20,342/-. The tribunal added an amount of about ₹8000/- to award compensation on that account at ₹28,132/-.

11. There is no proof adduced that the injuries suffered by the two claimants have resulted in any permanent disability. It was submitted by the learned counsel representing them that the claimants had suffered disability which may not be permanent in nature but the same has led to “permanent handicap”. This claim is just in the air and not supported by any medical opinion and, thus, cannot be given any credence.

12. In the facts and circumstances, no fault can be found with the awards on account of reimbursement of medical bills.

13. Having regard to the nature of injuries suffered and the date of accident, as also the period of treatment, compensation awarded in the two cases cannot be said to be inadequate or deficient in any which way.

14. Coming to the appeals of the insurance company, it may be noted that the insurance company though taking the contentions mentioned earlier in the pleadings did not lead any evidence during inquiry before the tribunal. It is only in the course of hearing on its appeals that it came up with applications seeking permission to adduce “additional evidence” under Order 41 Rule-27 of the Code of Civil Procedure, 1908 (CPC) contending, *inter-alia*, that upon verification it had been now found that the driving license of Balwinder (third respondent in the claim petitions) was a fake document.

15. It is pertinent to note that the application under Order 41 Rule-27 CPC were moved on 17.07.2008, almost 12 years after the accident and more than

a decade after the insurance company had been noticed by the tribunal respecting the claim petitions. It is vaguely stated in the said applications that the insurance company “could not examine witness to prove breach of terms and conditions as the driving licence of the driver was found fake” on its verification. It does not specify any reasons as to why it could not examine its witnesses at the appropriate stage or as to why it was unable to verify the relevant facts in this regard at the time of inquiry at any earlier point of time. In the above said application under Order 41 Rule-27 CPC, the insurance company contended, *inter-alia*, that the driving licence bearing no.B-8268/92 purportedly issued by licensing authority, Gwalior, Madhya Pradesh was found to be fake. It is nowhere explained either in the applications or in the evidence of Abhishek (AW1), its administrative officer recorded on 26.08.2014 during the pendency of these appeals, as to from where the insurance company had gathered that this was the license presented by the driver of the offending vehicle to be the one he was holding at the time of accident. The insurance company did not even call upon the insured (registered owner of the vehicle) by any notice including in the nature of one under Order 12 Rule-8 CPC to produce the relevant documents including the driving licence of the driver who would have been driving the offending vehicle at the time of accident.

16. In the above facts and circumstances, the contentions and appeals of the insurance company are wholly unmerited. Thus, these appeals are dismissed.

17. As the insurance company has engaged in frivolous litigation, the statutory amounts, if deposited by it in its appeals, shall be paid as costs to Delhi High Court Legal Services Authority.

R.K. GAUBA
(JUDGE)

FEBRUARY 18, 2016
SSC

