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

Date of Decision: 24th February, 2016

+ **MAC.APP. 465/2010**

NATIONAL INSURANCE CO LTD

..... Appellant

Through: Ms Shantha Devi Raman with Mr.
Arbaaz Hussain, Advs.

versus

RAMESH CHANDER & ORS

..... Respondents

Through: Ms Alka Chojjar with Mr. Vipin
Yadav, Advs. for R-1.

Ms Arati Mahajan Shedha with Mr.
Manoj Kumar, Advs. for R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Ramesh Chander, aged 47 years, employed as a conductor in Delhi Transport Corporation (DTC) suffered injuries and consequent thereto permanent functional disability to the extent of 20%, due to a motor vehicular accident that occurred at about 8.20 am on 11.02.2006 involving a DTC bus bearing No.DL-1PB-2007 (offending vehicle) which was driven at that point of time by second respondent herein, it having been admittedly insured against third party risk by the third respondent herein (DTC) with the appellant insurance company (insurer). He (first respondent in the appeal) filed claim petition under Section 166 read with Section 140 of the Motor Vehicles Act, 1988 (MV Act) on 24.05.2006 before the motor accident claims tribunal (Tribunal) which was registered as suit

No.227/2008 (2006). The tribunal held inquiry and, on that basis, awarded compensation calculated as under :

1. Compensation for medical expenses	...Nil...
2. Compensation for conveyance & special diet charges	₹10,000/-
3. Compensation for attendant charges	₹6,000/-
4. Compensation for loss of income	₹69,395/-
5. Compensation for loss of earning capacity	₹4,90,930/-
6. Compensation for pain and sufferings	₹60,000/-
7. Compensation for loss of amenities of life	₹60,000/-

Total payable sum	₹6,96,325/-

2. The appellant insurance company was directed to pay the above mentioned amount with interest at the rate of 7.5% per annum from the date of filing of the petition till realization.

3. The appeal at hand was filed questioning the computation of loss of earning capacity in future in the sum of ₹4,90,930/- arguing that the tribunal wrongly adopted the multiplier of 13, ignoring that the first respondent had suffered no future loss of income and during his evidence as PW-1, he had admitted the same that he had continued to be in the same job and with increased salary and allowances and had even been entitled for further promotions also.

4. Learned counsel for the claimant contested the appeal arguing that the element of increase in the income over the period instead should also have been taken into account to calculate the loss of earning capacity. This argument must be rejected in view of the following observations of the

Supreme Court in (paras 45 and 46) the judgment in the case reported as *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121:-

“45. The assumption of the appellants that the actual future pay revisions should be taken into account for the purpose of calculating the income is not sound. As against the contention of the appellants that if the deceased had been alive, he would have earned the benefit of revised pay scales, it is equally possible that if he had not died in the accident, he might have died on account of ill health or other accident, or lost the employment or met some other calamity or disadvantage. The imponderables in life are too many. Another significant aspect is the non-existence of such evidence at the time of accident.

46. In this case, the accident and death occurred in the year 1988. The award was made by the Tribunal in the year 1993. The High Court decided the appeal in 2007. The pendency of the claim proceedings and appeal for nearly two decades is a fortuitous circumstance and that will not entitle the appellants to rely upon the two pay revisions which took place in the course of the said two decades. If the claim petition filed in 1988 had been disposed of in the year 1988-89 itself and if the appeal had been decided by the High Court in the year 1989-90, then obviously the compensation would have been decided only with reference to the scale of pay applicable at the time of death and not with reference to any future revision in pay scales.”

5. It is a contention raised by the appellant that loss of future earning would occur only upon the appellant superannuating from the service with DTC which, according to submission of the counsel, would be at the age of 60 years. Thus, future earning capacity had to be calculated on the multiplier of 9 rather than 13.

6. The tribunal computed the loss of future earnings by calculating the monthly income at ₹15,734/86 after adding the element of 30% increase, which was the correct approach in view of the decision in *Sarla Verma* (supra). The monthly income thus calculated is rounded at ₹15,735/-. Since the loss of earning capacity is 20%, loss of future earning needs to be computed to the extent of (₹15,735/-x20 divided by 100) ₹3,147/- per month on the multiplier of 9. The total loss of future earning therefore comes to (₹3,147/-x12x9) ₹3,39,876/- rounded off to ₹3,40,000/- . Adding the other heads of compensation as awarded by the tribunal, the total compensation payable in the case at hand is calculated to be ₹5,45,395/-, rounded off to ₹5,46,000/-.

7. The counsel for the claimant pointed out that the tribunal has granted interest of 7.5% per annum only. Indeed this needs to be increased to nine percent (9%) per annum from the date of filing of petition till realization. [*Kaushnuma Begum vs New India Assurance Co. Ltd.* (2001) 2 SCC 9; *Supe Dei vs National Insurance Co. Ltd.* (2009) 4 SCC 513; *Municipal Corporation of Delhi, Delhi vs Association of Victims of Uphaar Tragedy and Ors.* (2011) 14 SCC 481; *Basappa vs T. Ramesh* (2014) 10 SCC 789; *Syed Sadiq etc. vs Divisional Manager, United India Ins. Company* (2014) 2 SCC 735; *Surti Gupta vs United India Insurance Company and Ors.* 2015 (3) SCALE 795; *Kumari Kiran vs Sajjan Singh* (2015) 1 SCC 539.]

9. The award is modified as above. It shall be released and protected in terms of the directions of the tribunal in the impugned judgment.

9. The insurance company had deposited the awarded amount with the tribunal. By order dated 06.09.2010, fifty percent (50%) of the said deposited amount was allowed to be released. The tribunal shall now

calculate the amount payable to the claimant in terms of award modified as above and release the balance to the claimant and refund the excess amount, along with the statutory amount, if any deposited, to the insurance company.

10. The appeal is disposed of in above terms.

R.K.GAUBA, J

FEBRUARY 24, 2016/afa

