$~R-68

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

Date of Decision: 05th May, 2016

\+ **MAC.APP. 529/2007**

NEW INDIA ASSURANCE CO LTD

..... Appellant

Through Mr. L K Tyagi, Adv.

versus

YASHPAL AND ORS.

..... Respondent

Through Mr. Sanjeev Srivastava, Adv.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The first respondent (claimant) suffered injuries in a motor vehicular accident that occurred at about 9.30 PM on 10.10.2004 in the area of Mangolpuri, S Block, Petrol Pump within the jurisdiction of police station Mangolpuri, Delhi, involving a motorcycle bearing registration No.DL 4S AG 0675 (offending vehicle) which was admittedly insured against third party risk with the appellant insurance company (insurer). The injuries suffered by him included those in the head region, ear and left lower limb. On 23.06.2005, a medical board of Sanjay Gandhi Memorial Hospital issued disability certificate (Ex.PW4/A) stating that he has suffered physical disability to the extent 55% in relation to left lower limb, he being a case of

fracture of shaft femur on the left side. As per the said disability certificate, the case required reassessment after the period of five years. On 20.09.2007, another medical board of the same hospital issued fresh certificate (page 155 of the tribunal's record) now certifying him to be disabled permanently in relation to the lower limb to the extent of 63%. This certificate was affirmed before the motor accident claims tribunal (tribunal) by Dr. Sanjeev Kumar (PW4) orthopedic surgeon of the said hospital and member of the medical board.

2. Respondent (claimant) instituted an accident claim case (suit 344/2006) on 05.11.2004 impleading the appellant insurance company (insurer) as one of the respondents in addition to driver and owner of the offending vehicle, alleging that the accident had been caused due to negligent driving of the offending vehicle. His case to this effect was upheld and, by judgment dated 30.05.2007, compensation was granted in the sum of Rs.4,24,771/- by the tribunal, calculating it as under :

1. Compensation for medical expenses	*₹819/-*
2. Compensation for conveyance and special diet	*₹5,000/-*
3. Compensation for permanent disability	*₹3,93,952/-*
4. Compensation for pain and suffering and loss of amenities of life	*₹25,000/-*
	₹4,24,771/-

3. The insurer by the appeal at hand questions the computation on account of permanent disability submitting that the tribunal has taken the disability to the extent of 63% in relation to the left lower limb as functional disability in relation to the whole body. This, in the submission of the

appellant, is erroneous. He is also aggrieved with the compensation for medical expenses, non-pecuniary damages and rate of interest.

4. Arguments have been heard on both sides and record perused.

5. It is noted that in the claim case the petitioner only vaguely described his injuries to be compound fracture in the left leg with cut in the ear and head injury besides multiple grievous injury over the body. In the evidence, while appearing as his own witness (PW2), he did not give better particulars of injuries or effect on his ability to engage in normal activities. It does appear that a disability certificate has been issued in his favour and further that PW4, one of the members of the medical board which issued the said certificate during his cross-examination, while referring to the first disability certificate stated that though the certificate restricted the extent of disability in relation to the left lower limb, it was actually in relation to the whole body. This stray observation of PW4 in his testimony has been accepted by the tribunal as the correct state of facts. This Court does not approve of the approach taken by the tribunal. In the given facts and circumstances, taking into account the fact that the claimant was working as a transformer mechanic at the relevant point of time, his functional disability is taken as 30% and fresh assessment is made on account of loss of earning due to disability factor.

6. It is noted that the appellant was 26 years old when he suffered the injuries. In these circumstances, the multiplier of 17 would have to be applied. The tribunal took the annual income as ₹34,740/-. Therefore, the

loss of earnings in future due to disability are computed as (34,740 x 30 ÷ 100 x 17) ₹1,77,174/- rounded off to ₹1,80,000/-.

7. While the award on account of loss of future income due to disability deserves to be reduced accordingly, it is noted that the tribunal has not made adequate award on account of medical expenses as it has been restricted only to ₹819/-. Further, the claimant having been certified to be disabled on permanent basis, the composite award of ₹25,000/- towards pain & suffering and loss of amenities of life appears to be on the lower side. Keeping in view the facts and circumstances of the case, compensation on account of medical expenses is increased to ₹20,000/- and compensation under the non-pecuniary heads of pain & suffering and loss of amenities of life taken cumulatively is increased to ₹50,000/-.

8. Thus, the total compensation in the case comes to (1,80,000 + 20,000 + 50,000 + 5,000) ₹2,55,000/-.

9. It is noted that the tribunal has awarded only 7.5% per annum as the rate of interest. 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.

10. The award is modified as above.

11. By order dated 03.12.2007, the appellant had been directed to deposit the entire awarded amount with the Registrar General within the period specified. By subsequent order dated 08.04.2009, the deposited amount with statutory amount of ₹25,000/- were transferred to the tribunal and an amount of ₹1 lakh was released to the claimant against personal bond. The

tribunal was directed to keep the balance in fixed deposit receipt. The tribunal shall now calculate the amount payable to the claimant in terms of the modified award and release the same from said deposit, refunding the excess and statutory deposit to the insurance company.

12. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 05, 2016/VLD