$~R-75 & 76

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

Date of Decision: 10th May, 2016

\+ **MAC.APP. 552/2007**

NEW INDIA ASSURANCE CO. LTD.

..... Appellant

Through Mr. Pankaj Seth, Adv.

versus

JAI BHAGWAN & ORS.

..... Respondent

Through Mr. Praveen Jain, Adv.

\+ **MAC.APP. 181/2008**

JAI BHAGWAN

..... Appellant

Through Mr. Praveen Jain, Adv.

versus

TARSEM LAL & ORS.

..... Respondent

Through Mr. Pankaj Seth, Adv. for insurance

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Jai Bhagwan, (appellant in MAC.APP.No.181/2008) was working as a conductor on bus bearing registration No.DBP 5101 which was

admittedly insured against third party risk with New India Assurance Co. Ltd. (appellant in MAC.APP.No.552/2007). On 26.07.1992, Jai Bhagwan fell out of the bus on account of negligent driving of the bus and both his lower limbs were run over by its rear wheels of the vehicle. Whilst left leg was amputated, the right leg suffered grievous injuries resulting in surgical procedures to be undergone several times during which a steel rod had to be inserted. The treatment for the left leg also had to continue and there was further amputation done at a hospital in Ambala. The claimant appeared before a medical board and was certified to have permanent disability to the extent of 100% (page 99 of the tribunal's record). He filed an accident claim case on 16.11.1992 impleading the insurance company, driver and owner of the said bus as parties. The tribunal held inquiry and, by judgment dated 21.03.2007, awarded compensation in the sum of ₹3,09,000/- with interest at 6% per annum from the date of filing of the petition till realization. In computing the said award, the tribunal took into account the medical expenses to the tune of ₹50,000/-, conveyance charges paid to the extent of ₹7,000/-, expenditure incurred on special diet in the sum of ₹10,000/-, loss of income on account of disability, calculated on minimum wages, in the sum of ₹1,92,000/- with ₹50,000/- added towards pain & suffering.

2. The insurer which was called upon to pay filed the appeal (MAC.APP.No.552/2007) primarily questioning the award on the ground that story of involvement of the bus had been fabricated as there was no police case registered. It is argued that the documents in the form of letters (Mark N & Mark O) addressed to SHO of police station Mehrauli and DCP

of the concerned district were sent by registered AD post vide postal receipts (Ex.PW1/4 and PW1/2) and delivered as per acknowledgment cards (Ex.PW1/5 and Ex.PW1/3) respectively, have been manufactured.

3. *Per contra*, the claimant has also filed appeal (MAC.APP.No.181/2008) which, at the hearing, is pressed only to seek further compensation on account of loss of amenities of life and to take care of the expenditure required for artificial leg to be procured besides pressing for increased rate of interest.

4. Arguments have been heard. Record perused.

5. It is noted that the claimant hails from a very poor strata of society. He was hardly 17 years old when deployed to work for gain. Given the poor background, illiteracy and ignorance on account of which he would be suffering from several handicaps in proper pursuit of his legitimate interests, the inability to secure a criminal case being registered against the principal tort-feasor is found to be inconsequential. The fact remains that the claimant had made efforts to get criminal action initiated by the police which, for reasons that cannot be fathomed now, was non-responsive. The absence of a police case by itself is no reason why his testimony (PW1) affirming the involvement of the bus and the negligence on the part of the driver should not be believed. Therefore, there is no good reason to interfere with the finding returned by the tribunal on the said aspect.

6. The grievance of the claimant about deficiency in the award on account of no compensation having been granted towards loss of amenities of life and to make provision for artificial limb to be procured is found to

be correct. Given the date on which the accident occurred, the learned counsel for the claimant presses for ₹25,000/- each to be awarded under the said heads. This seems to be justified and therefore, granted.

7. 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.

8. The award is thus enhanced by ₹50,000/-. The enhanced portion shall carry interest at the rate mentioned above. The insurer is directed to pay the same by requisite deposit with the tribunal within 30 days of this judgment whereupon it shall be released to the claimant.

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

10. Both appeals are disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 10, 2016
VLD