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

Date of Decision: 09th March, 2016

+ **MAC.APP. 924/2012**

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.

..... Appellant

Through Mr. Rajat Brar, Adv.

versus

MUNESH & ORS

..... Respondent

Through Mr. Navneet Goyal, Adv. for R-1

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Mr. Munesh, then aged 28 years, working as a mason, suffered injuries in a motor vehicular accident that occurred at about 7.50 PM on 18.09.2008 on being hit by car bearing No.HR 26X 2002 (the offending vehicle), it concededly being insured against third party risk with the appellant company (insurer) for the period in question. He preferred a claim petition under Sections 140 and 166 of Motor Vehicles Act, 1988 (MV Act) before the Motor Accident Claims Tribunal (the tribunal) on 14.01.2009 whereupon it was registered as MACT case No.1193/10/09 and inquired into. The tribunal granted compensation in the sum of ₹11,67,550/- with interest in favour of the claimant also adding ₹50,000/- as counsel fee and

₹5,000/- as out of pocket expenses to the advocate representing the claimant. The compensation awarded by the tribunal has been calculated thus in the impugned judgment as under :-

> *"Pecuniarv damages (Special damages):*
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> | | |
> |---|---|
> | *1. Loss of income ------------------------* | *Rs. 23,094/-* |
> | *2. Loss of future income etc. -------------* | *Rs.8,24,456/-* |
> | *3. Special diet -----------------------------* | *Rs. 10,000/-* |
> | *4. Conveyance charges --------------------* | *Rs. 10,000/-* |
> | *5. Future treatment medical expenses ----* | *Rs. 50,000/-* |
>
> *Non-pecuniarv damages (General damages):*
>
> | | |
> |---|---|
> | *6. Pain, suffering & trauma and -----------* | *Rs. 1,00,000/-* |
> | *7. Loss of amenities, enjoyment of life, etc.--* | *Rs. 1,50,000/-* |
> | *Total* | *Rs. 11,67,550/-"* |

2. The insurance company has come up in appeal questioning the award under the heads of loss of future income, future treatment/medical expenses and general damages.

3. The claimant had submitted before the tribunal that as a result of the injuries suffered he had been rendered permanently disabled. The tribunal referred the case to medical board of All India Institute of Medical Sciences (AIIMS) for assessment. The medical board of AIIMS examined the claimant and issued its report dated 04.04.2011 (page 153 of the tribunal's record). In the opinion of the medical board, the claimant was permanently physically impaired person, the disability being to the extent of 25% in relation to his right upper limb, he being a case of "malunited fracture of right humerus with difficulty in activities of daily living".

4. The tribunal took note of this medical opinion but assessed the functional disability to the extent of 70% on the ground he would not be able to lead a normal life and would be entirely dependent upon his family members. This Court does not uphold the said reasoning or the conclusion. The disability assessed by the medical authorities to the extent of 25% in relation to the right lower limb could not have been assessed to the extent of 70% functional disability. Indeed, the claimant being engaged in the job of mason, would have his movements restricted on account of the injuries suffered and their after effect. Following the view taken in *Master Mallikarjun v. Divisional Manager, The National Insurance Company Ltd.* (2014) 14 SCC 396, the functional disability in the case is taken as 18%.

5. The tribunal assessed the notional income of the claimant at ₹3,849/- it being the rate of minimum wages and added 50% towards future prospects. 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.

6. 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. Lalta 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 has not led any evidence showing the salary was subject to any periodic increase.

7. In above view, the element of future prospects has to be kept out of consideration. In these circumstances, loss of future income is calculated as (3849 x 18 ÷ 100 x 12 x 17) ₹1,41,335 rounded off ₹1,42,000/-.

8. The claimant could not prove any medical expenses during the period of treatment. The tribunal, however, added ₹50,000/- as future medical expenses. Whilst it does appear that the award on account of future treatment is based on some guess work, it cannot be ignored that there is no award on account of medical expenses actually incurred during treatment. Given the status in life of the claimant, he may not have been able to muster requisite evidence of the expenses he would have actually incurred during the treatment. Indeed given the nature of injuries suffered, it cannot be accepted that there were no medical expenses. Therefore, the addition of ₹50,000/- cannot be grudged.

9. Having regard to the injuries and disability suffered, the amount of general damages in the case by the tribunal does not call for any interference. [*Master Mallikarjun* (supra)]

10. In above view, the award needs to be reduced by (8,24,456 – 1,42,000) ₹6,82,456/-. Consequently, it is reduced to (11,67,550 – 6,82,456) ₹4,85,094/- rounded off to ₹4,86,000/-.

11. It is noted that the tribunal had awarded only 7.5% per annum as the rate of interest. Having regard to 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 enhanced to 9% per annum from the date of filing of the petition till realization.

12. There is no justification in the counsel fee and out of pocket expenses granted by the Tribunal. The directions to that effect are set aside.

13. By order dated 27.08.2012 the insurance company had been directed to deposit 75% of the award excluding counsel fee and out of pocket expenses with UCO Bank, Delhi High Court branch in the name of the claimant and the UCO Bank to hold it in fixed deposit receipt initially for a period of six months to be renewed from time to time. On 08.01.2013, it was noted that instead of deposit with the UCO Bank, the appellant had deposited the entire awarded amount with the tribunal. By order passed on the said date 50% of the said deposit was allowed to be released by the tribunal to the claimant.

14. The tribunal is directed to re-calculate the balance amount, if any, payable to the claimant and release the same forthwith in terms of the impugned judgment though subject to modification as above. The amount deposited in excess, with statutory deposit (if made), shall be refunded to the insurance company.

15. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 09, 2016
VLD