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

Date of Decision: 28th March, 2016

+ **MAC.APP. 952/2011 & CM No. 19824/2011**

PRITAM SINGH Appellant

Through: Mr. Varun Goswami, Adv.

Versus

ORIENTAL INSURANCE CO. & ORS. Respondents

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

Mr. Rajesh Dwivedi & Mr. Zahid Ali
for Mr. A.K. De, Adv. for R-3.

+ **MAC.APP. 961/2011 & CM No. 19962/2011**

ORIENTAL INSURANCE CO. LTD. Appellant

Through: Mr. Pradeep Gaur, Adv.

versus

PRITAM SINGH & ORS. Respondents

Through: Mr. Varun Goswami, Adv. for R-1.

Mr. Rajesh Dwivedi & Mr. Zahid Ali
for Mr. A.K. De, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL)

1. Both these appeals are directed against the judgment dated 19.07.2011 of the motor accident claimants tribunal (tribunal) in accident claim case

(MACT Petition No. 243/2008) which had been preferred by Pritam Singh, (the appellant in MAC Appeal No. 952/2011) on 28.08.2008 seeking compensation under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) for the injuries and permanent disability (100%) suffered by him in a motor vehicular accident that had occurred on 25.08.2007 at about 7-7.30 p.m. on Sinnar Shirdi Road involving collision between two motor vehicles, one being Qualis bearing No. MH 01 CA 7481 (Qualis) and the other a truck bearing registration No. MH 18 M 7005 (the truck). The appellant Pritam Singh (claimant) was travelling in the Qualis car on way to Shirdi accompanied by certain others, when the said vehicle was involved in a head-on collision with the truck. The Qualis car was driven by Mohd. Akbar Kamar @ Raju Mohd. Qubal (Kavval) (fifth respondent in MAC Appeal No. 952/2011), it being owned by Maya Devi Agarwal (fourth respondent in MAC Appeal No. 952/2011). The truck, on the other hand, was driven by Rajendra Indrasingh Girase (second respondent in MAC Appeal No. 952/2011), it being insured against third party risk with Oriental Insurance Company Ltd. (appellant in MAC Appeal No. 961/2011).

2. The tribunal held inquiry and, by impugned judgment dated 19.7.2011, awarded total compensation in the sum of ₹ 1,25,00,000/-, it having been computed (in para 228) thus:-

1. Medicines & Treatment	₹ 28,55,000/-
2. Future Treatment	₹ 2,00,000/-
3. Loss of Income / Earning Power	₹ 83,25,000/-
4. Loss of Amenities	₹ 1,00,000/-
5. Loss of Expectancy of Life	₹ 1,50,000/-
6. Pain and Suffering	₹ 2,00,000/-
7. Transportation / Boarding	₹ 1,85,000/-

<i>Lodging Charges</i>	
8. <i>Attendant Charges</i>	₹ 3,35,000/-
9. <i>Future Attendant Charges</i>	₹ 50,000/-
10. <i>Conveyance & Special Diet</i>	₹ 1,00,000/-
<i>TOTAL</i>	₹ 1,25,00,000/-

3. The tribunal found that the accident had occurred due to rash/negligent driving of the truck and, thus, held its driver (who is also described as the owner) to be liable to pay and since the said vehicle was insured against third party risk with Oriental Insurance company (appellant in MAC Appeal No. 961/2011), it was asked to satisfy the award.

4. The insurer of the truck has come up in appeal (MAC Appeal No. 961/2011) mainly to question the finding recorded about negligence, its contention being that a false story had been cooked up to bring home the case against the driver/owner of the truck alleging it to be liable, even in the face of the criminal case registered by the local police to the effect that the accident had occurred because the Qualis driver had been rash in driving, he having brought the vehicle in a wrong lane, leading to the head-on collision. The contention of the insurance company is that the evidence of Shree Bhagwan (PW-2) and Asit Dass (PW-3) examined by the claimant on the strength of their affidavits (Ex.PW2/A and Ex.PW-3/A respectively) is against their respective version during investigation of the corresponding criminal case before the local police. The insurer is also aggrieved with the computation of the compensation under the heads of loss of income/earning power on the ground that future prospects were wrongly added even though the income-tax returns (ITRs) for the period 2003-2004 to 2006-2007

(Ex.PW1/26 collectively) would not show any progressive rise in income from the business in which the claimant had been engaged.

5. *Per contra*, the claimant by his appeal (MAC Appeal No. 952/2011) has submitted that the award under the heads of loss of future income, loss of amenities, loss of expectancy of life, pain & suffering and future attendant charges is inadequate and having regard to the fact that the claimant has been rendered in a vegetative state, he deserves better compensation under the said non-pecuniary heads of damages.

6. Having gone through the evidence of PW-2 and PW-3, this Court finds no substance in the argument of the insurer. The said witnesses were passengers in the Qualis car and had a vantage position to see the sequence of events. Their evidence clearly shows that Qualis was moving in the right lane and going towards Shirdi at a normal speed, and further that it is the truck which had suddenly come in the path of the Qualis resulting in a head-on collision. There is no thumb rule that whenever a head-on collision occurs, the drivers of both the vehicles must be held equally responsible. Since it is the truck driver which had brought his vehicle in the wrong lane, it is for him to explain the reasons for doing so. The argument of the insurer that the witnesses (PW-2 and PW-3) examined by the claimant had spoken different state of facts before the police is meritless. The said witnesses were never confronted with their statements before the police so as to discredit their version during inquiry before the tribunal. The insurance company would have been well within its rights to summon the truck driver into the witness box to explain his conduct. No such effort was undertaken by the said party.

7. In above facts and circumstances, the conclusion reached by the tribunal holding the truck driver to be wholly responsible for the head-on collision is well founded and for reasons properly set out in the impugned judgment and, therefore, there is no cause for any interference on such account.

8. The evidence led by the claimant clearly proved that he has been rendered permanently disabled to the extent of 100%. In fact, the evidence shows that he is in persistent vegetative state and, therefore, the loss of earnings has to be calculated accordingly. The earnings prior to the accident were proved on the basis of ITRs for the period 2003-2004 to 2006-2007. There is substance in the submission of the insurer, however, that there is no consistency in the earnings from business as declared in the ITRs. Whilst it was declared to be ₹ 4,15,068/- for the assessment year 2003-2004, it had dropped to ₹ 3,92,934/- in the following year (2004-2005). The next year (2005-2006) it was ₹ 4,65,330/- to again fall in the next following year (2006-2007) to ₹ 4,49,775/-. Noticeably, there is additional income declared accruing from house property and capital gains in the said year, thus, showing a higher income on which tax was to be paid.

9. 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.

10. 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.

11. Having regard to the facts and circumstances, there being no consistency in the claim of rising income, and in the face of law to above effect, the claimant being a self-employed person, the element of future prospects has to be kept out. Thus, the loss of future earnings has to be calculated, assuming the income of ₹ 4,49,775/- rounded off to ₹ 4,50,000/-.

12. Before the above said loss is computed, however, the corresponding income tax liability will have to be discounted. On the basis of income tax rates enforced for financial years 2005-2007 the total tax liability is worked out approximately at ₹ 85,000/-. This would mean, loss of earnings has to be computed at (4,50,000- 85,000) ₹ 3,65,000/- per annum. On the multiplier of 15, which was rightly adopted for such purposes, the total loss

of income on account of injuries and disability comes to $(3,65,000 \times 15)$ ₹ 54,75,000/-.

13. The tribunal calculated the attendant charges that were incurred by the claimant during the treatment till the filing of the petition at ₹3,35,000/- but for future such expenses it awarded ₹ 50,000/-, in lumpsum. This may not be a correct approach to the issue. Since the claimant has been rendered permanently disabled to the extent of 100%, there is no doubt that he would require constant presence of attendant throughout his life. In these circumstances, the proper course would be to take care of attendant charges incurred during treatment and for future on the assumption that he would need to engage an attendant on regular basis. The expenditure towards this end can be computed on the basis of minimum wages of an unskilled worker relevant to the date of accident which was ₹ 3516 per month. Calculated thus, the compensation for attendant charges comes to $(3516 \times 12 \times 15)$ ₹ 6,32,800/-, rounded off to ₹ 6,35,000/-.

14. The award of ₹ 2,00,000/- towards future treatment expenses was granted on guess work. Seen against the expenses during initial treatment (₹ 28,55,000/-), the said award does not take into account the rising cost of medical expenses. Having regard to the nature of injuries suffered, and their aftermath, the award of ₹ 5,00,000/- towards future treatment appears to be just and proper and so granted.

15. The awards under the other heads (loss of amenities, loss of expectancy of life and pain & suffering) with which the claimant is

aggrieved, however, are found to be just and adequate, and, therefore, call for no further improvement.

16. In above facts and circumstances, the compensation payable in the case is re-calculated as under:-

1. Medicines & Treatment	₹ 28,55,000/-
2. Future Treatment	₹ 5,00,000/-
3. Loss of Income / Earning Power	₹ 54,75,000/-
4. Loss of Amenities	₹ 1,00,000/-
5. Loss of Expectancy of Life	₹ 1,50,000/-
6. Pain and Suffering	₹ 2,00,000/-
7. Transportation / Boarding Lodging Charges	₹ 1,85,000/-
8. Attendant Charges(During Treatment & Future	₹ 6,35,000/-
9. Conveyance & Special Diet	₹ 1,00,000/-
TOTAL	₹ 1,02,00,000/-

17. The award of compensation is modified accordingly. Needless to add, it shall carry interest as levied by the tribunal.

18. It is disturbing to note that the tribunal having awarded compensation proceeded to distribute it amongst the members of the family of the claimant Pritam Singh including his wife, children and parents as well, leaving only an amount of ₹ 60,00,000/- from out of ₹ 1,25,00,000/- to his share. This approach was taken with reference to judgments of this Court in *New India Assurance Co. Ltd. vs. Ganga Devi & Ors. III (2010 ACC 6* and *Union of India vs. Nanisiri (2010) II ACC 101* and with the observation that the claimant being in persistent vegetative state is unable to manage his own affairs and would depend on his brother/guardian ad-litem Gajender Singh

through whom the claim petition was filed and prosecuted. While disbursing the amounts of ₹ 15,00,000/-each to the two children (Prashant & Tanish), ₹ 25,00,000/- to the wife (Sushma Singh) and ₹ 5,00,000/- each to the parents (Ishwar Singh & Vedwati) the tribunal described them as “legal heirs of the petitioner”.

19. It is clear that the tribunal has not appreciated the judgments in *Ganga Devi* (supra) or *Nanisiri* (supra) and failed to bear in mind that the case at hand arose out of a claim petition filed for and on behalf of Pritam Singh for compensation for injuries and disability suffered by him. Mercifully, he is still alive though, sadly, rendered dependent. In these circumstances, the compensation awarded under Section 166 MV Act is an amount which was due to him and him alone. His dependent family members cannot be described as his “legal heirs”. Undoubtedly, they look up to him for sustenance. This, however, is an obligation that will have to be discharged by him through those who are responsible to take care of his well-being and to manage his affairs.

20. There is absolutely no justification for distribution by the tribunal of the compensation to which he is entitled under the law amongst his family members during his life time.

21. By order dated 02.11.2011, the learned single judge then dealing with the matter (MAC Appeal No. 961/2011) had directed the insurance company to deposit 80% of the awarded compensation with State Bank of India, Dwarka, in the name of the claimants and thereupon proportionate amount

was to be released to each of them. The learned counsel for the claimant (Pritam Singh) confirms that the amount has accordingly been released.

22. It is a matter of some solace that the substantial amount (₹15,00,000/-) released to the wife was directed to be kept in fixed deposit receipts (FDRs) in her name in five portions by investment for varied terms. Similarly, the entire amounts apportioned in favour of the children (Prashant and Tanish) were directed to be put in FDRs in their respective names. The said members of the family, as also the parents of the claimant, shall be obliged to transfer the said money held in their respective names to the account in the name of the claimant (Pritam Singh), leaving its utilization for his benefit or according to his discretion. Upon such transfer of the money, the same shall be held in the name of the claimant in fixed deposit receipts in the manner directed by the tribunal in (Para 241 of) the impugned judgment.

23. The tribunal shall take necessary steps for due compliance with these directions.

24. The insurance company shall now deposit the balance of its liability with the tribunal within 30 days of this judgment which shall entirely be released to the claimant to be put in his name in a fixed deposit for a period of ten years with right to draw monthly interest. For removal of doubts, if any, it is made clear that no further amount shall be released to the dependant family members of the claimant. The balance, if any, from out of the deposit, lying in the bank shall also be released to the claimant alone to be treated in the same manner as mentioned above.

25. The statutory deposit, if made, shall be refunded to the insurer.

26. The appeals are disposed of in above terms.

**R.K. GAUBA
(JUDGE)**

MARCH 28, 2016

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