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

Date of Decision: 12th May, 2016

+ **MAC.APP. 1017/2013**

HDFC ERGO GEN. INS. CO. LTD.

..... Appellant

Through: Mr. A K Soni, Adv.

versus

SURENDER KUMAR & ORS.

..... Respondents

Through: Mr. S N Parashar, Adv. for R-1

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The first respondent (claimant) suffered injuries described as compound grade-II fracture shaft of femur right side with compound grade-III fracture both bones right leg with fracture tibial plateau right side distal vesicular deficit right side and other multiple injuries in a motor vehicular accident that occurred on 17.03.2012 on account of negligent driving of a motor vehicle described as Eicher Canter bearing registration No.DL 1LP 3646, which was admittedly insured against third party risk for the period in question with the appellant insurance company (insurer). During the course of treatment, he had to undergo surgical procedures wherein his right leg above knee up to lower 1^{3rd} of the thigh had to be amputated. He has been assessed by a medical board of Deen Dayal Upadhyay Hospital of the Government of NCT of Delhi, which issued disability certificate (Ex.PW1/4), to be a case of post-traumatic amputation resulting in

permanent physical disability to the extent of 80% in relation to right lower limb. It must be added that on the basis of evidence adduced, the motor accident claims tribunal (tribunal) found him to be suffering from functional disability affecting his earning capacity to the extent of 50%.

2. The claimant instituted an accident claim case (MACT No.326/12) on 06.07.2012 seeking compensation on the averment that he had suffered injuries due to negligent driving of the aforementioned vehicle. At the inquiry, it was admitted that the said vehicle was insured against third party risk for the period in question with the appellant insurance company (insurer). Holding that the case of negligent driving had been brought home, the driver and owner of the offending vehicle, also impleaded as parties, were found by the tribunal by judgment dated 10.09.2013 to be jointly and severally liable to pay. This finding has not been challenged, and hence has attained finality.

3. The insurer was directed to pay the compensation to the claimant in the sum of Rs.21,41,210/- with interest at 7.5% per annum from the date of filing of the petition till realization. By the appeal at hand, the insurer questions the award of compensation. The tribunal has calculated the above mentioned amount of compensation under various heads. The appellant assails only the award in the sum of Rs.10,22,392/- towards loss of future earnings on account of disability besides the award of Rs.7,00,000/- granted towards artificial limb and for its replacements/maintenance. *Per contra*, it is argued by the claimant, that the rate of interest is inadequate.

4. Having heard the counsel on both sides and having gone through the tribunal's record, it is noted that the claimant was unable to prove by any cogent evidence, the nature of his employment or earnings. There is no

proof of any regular income, much less progressive rise in income. The tribunal assumed his income at Rs.8,112/-, it being the rate of minimum wages of a matriculate in force at the relevant point of time. While this is not contested, exception has been taken to the addition of 50% towards future prospects.

5. 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 SCC 166.

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.

7. In the face of evidence about earnings as noted above, the future loss of earnings has to be calculated only on the notional income of Rs.8,112/-.

It is noted that though the tribunal accepted the evidence that the age of the claimant at the relevant point of time was 24, it applied the multiplier of 14 for calculating the future loss of income. The calculation should have been made instead on the multiplier of 18. It is recomputed as $(8112 \div 2 \times 12 \times 18)$ Rs.8,76,906/-. Since the tribunal had calculated the compensation under this head at Rs.10,22,392/-, the award will have to be reduced by $(10,22,392 - 8,76,096)$ Rs.1,46,296/-.

8. The tribunal has granted Rs.7,00,000/- towards cost of artificial limb, assuming the cost of one such procurement at Rs.1,50,000/-. It also proceeded on the assumption that the claimant would need its replacement at least three times during his remaining life and added Rs.1,00,000/- for financing the annual maintenance.

9. It is argued on behalf of the insurance company that the above award is unduly inflated and that too without any evidence. It is also argued that since the tribunal had also added interest to be levied on this amount, the award has become unduly high. It is further submitted that replacements would have to be arranged only upon proper medical prescription in which regard no evidence had been adduced. At the same time, the counsel submitted that award on the assumption that the claimant, having once procured an artificial limb, would need its replacement at the most twice during his lifetime should have been sufficient. The counsel for the claimant fairly conceded to the last-noted plea of the insurer.

10. Having regard to the facts and circumstances of the case and the nature of evidence adduced, the submission of the counsel for the insurance company that compensation for arrangement of an artificial limb and for its two replacements along with requisite finance for its regular maintenance

and upkeep should suffice deserves to be accepted, this in addition to proper directions being given to ensure that the amount awarded under this head is not unnecessarily frittered away. In these circumstances, the award under the head of artificial limb is reduced by ₹1,50,000/-.

11. In the result the award is reduced to (21,41,210 – 1,46,296 – 1,50,000) ₹18,44,914/-, rounded off to ₹18,50,000/-.

12. 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.

13. The tribunal while directing the insurance company to pay the awarded amount with interest to the claimant had permitted ₹7,50,000/- to be released to him in the form of two cheques to enable him to set up a small business, the entire balance having been directed to be put in nationalized bank in fifteen fixed deposit receipts of equal amounts for varying periods of one to fifteen years with provision for drawal of monthly interest.

14. By order dated 08.11.2013, the insurance company had been directed to deposit the entire award with up-to-date interest within the period specified with the Registrar General of this Court and from such deposit 60% allowed to be released to the claimant, the balance kept in fixed deposit receipt with UCO Bank, Delhi High Court branch for a period of six months to be renewed periodically. On being asked, the counsel for the claimant shows ignorance on the question as to whether the claimant has utilized the

money released under the interim order for setting himself up in any gainful engagement/activity.

15. Given the fact that the award has been reduced, it is directed that the entire balance amount now payable to the claimant shall be put in three equal fixed deposit receipts in a nationalized bank of his choice, each for a period of 15 years. The claimant shall be entitled to receive periodical interest only from two of such fixed deposit receipts which he is advised to draw only when absolutely necessary. No interest shall be permitted to be drawn from the third fixed deposit receipt as the same shall be available for him to avail for procurements/replacements of artificial limb. For such purposes, as and when required, the claimant may approach the tribunal for appropriate directions, subject to proper prescription in such regard being submitted.

16. The Registrar General shall issue necessary orders for release of the balance payable to the claimant in terms of the award modified as above and for refunding the excess, if any deposited, to the insurance company. Conversely, if there is shortfall, the insurance company will deposit the deficient amount with the tribunal within 30 days.

17. The statutory deposit, if made, shall be refunded.

18. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 12, 2016
VLD