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

Date of Decision: 26th April, 2016

+ **MAC.APP. 1142/2011 & CM no. 23034/2011**

NATIONAL INSURANCE CO LTD Appellant

Through: Ms. Shantha Devi Raman, Adv.

versus

PRAVEEN SHARMA Respondent

Through: Mr. S. N. Parashar, Adv.

AND

+ **MAC.APP. 854/2013**

SH PRAVEEN SHARMA & ORS Appellant

Through: Mr. S. N. Parashar, Adv.

versus

NATIONAL INSURANCE CO LTD Respondents

Through: Ms. Shantha Devi Raman, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Praveen Sharma (appellant in MAC appeal no.854/2013) suffered injuries in a motor vehicular accident that occurred on 03.02.2008 at about

02:20 PM within the jurisdiction of police station M. S. Park on account of negligent driving of car bearing registration no.DL-7B-9335 (the offending vehicle) admittedly insured against third party risk for the period in question with National Insurance Co. Ltd. (appellant in MAC appeal no.1142/2011). He instituted a claim case (MACT suit no.166/2008) on 21.04.2008 seeking compensation under Sections 140 and 166 of the Motor Vehicles Act (the MV Act) impleading the insurance company (insurer), the driver and owner respectively of the offending vehicle as respondents. The tribunal held inquiry and on that basis upheld the case that the accident had occurred due to negligent driving of the offending vehicle. It quantified the compensation in the sum of ₹5,47,800/- which includes certain medical expenses and loss of future income on account of disability, directing the insurer to pay with interest at the rate of seven & half percent (7.5%) per annum from the date of filing of the petition till realization.

2. The insurer, by its appeal (MAC Appeal no.1142/2011), questions the calculation of ₹1,56,545/- in the award (para 27 of the impugned judgment) on the ground that the said amount has already been received by reimbursement under medi-claim policy by the claimant. The learned counsel for the claimant at the hearing fairly conceded that the said amount cannot be claimed again in the claim petition under Section 166 of the Motor Vehicles Act, 1988 (the MV Act). Thus, amount of ₹1,56,545/- will have to be discounted.

3. By his appeal (MAC appeal no.854/2013), Praveen Sharma (the claimant) submits that his disability certificate (Ex.PW4/A) showed the disability to be permanent on account of locomotor impairment of left lower

limb which has been assessed to the extent of 26% in relation to the said part of the body. His grievances are that the tribunal while calculating loss of future income reduced the functional disability to the extent of 13%. He also submits that the tribunal rejected the evidence in the form of income tax return (ITR) submitted by him for the assessment years (AY) 2005-2006, 2006-2007 and 2007-2008 (Ex.PW1/6 collectively) and instead computed the loss of income by assuming income notionally at ₹4393, it being minimum wages payable to a graduate at the relevant point of time.

4. The contention of the claimant with regard to functional disability cannot be accepted. The evidence shows that he was engaged as an employee in the shop of his mother and was receiving salary in lieu of services rendered. The income tax returns relied upon by him further show that he was earning certain further amounts from private tutorial classes taken by him. In the facts and circumstances, having regard to the nature of injuries and disability suffered, functional disability assessed to the tune of 13% in relation to the whole body cannot be faulted.

5. But, there is merit in the grievances that the income has been wrongly assessed. The income tax returns referred to above were submitted before the date of accident. It is not a case where ITR only of one year has been relied upon. ITRs of the three years, one after the other, show progressive rise in the income. There is no reasons why the income declared in the ITR (for AY 2007-2008) ₹1,65,800/- should not have been accepted as good proof of his earnings. The loss of income for period of ten months when the claimant had remained unable to work for gain on account of prolonged treatment was calculated by the tribunal on the basis of income of ₹4,393/-.

It needs to be recalculated on the annual income of $(1,65,800 \times 10/12)$ ₹1,38,166/-, rounded off to ₹1,38,200/-. Since the tribunal had awarded ₹43,930/- under this head, it needs to be increased by $(1,38,200 - 43,930)$ ₹94,270/-.

6. Thus, the loss of future earning on account of functional disability to the extent of 13% must be granted. On the multiplier of 16 (the age of the claimant on the relevant date was 33 years), it is computed as $(1,65,800 \times 13/100 \times 16)$ ₹3,44,864/-. Since the tribunal had calculated the loss of future earnings in the sum of ₹1,09,648/-, the award is to be increased by $(3,44,864 - 1,09,648)$ ₹2,35,216/-. After discounting the amount of ₹1,56,545, the net comes to $(2,35,216 - 1,56,545)$ ₹78,671/-. The total compensation payable in the case, thus, computes as to $(5,47,800 + 78,671 + 94,270)$ ₹7,20,741/-, rounded off to ₹7,21,000/-.

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. By order dated 04.01.2012 (in MAC appeal no.1142/2011), the insurance company had been directed to deposit the entire awarded amount with interest with the Registrar General within the period specified and out of the same ₹3,00,000/- with proportionate interest was allowed to be released to the claimant, balance kept in fixed deposit receipt for a period of one years with periodic renewal. The balance shall also now be released to the claimant. The insurance company is directed to deposit the remainder of

its liability under modified award with proportionate interest whereupon the same shall also be released to the claimant.

9. The statutory amount, if made, by the insurer shall be refunded.

10. The appeals are disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 26, 2016
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