$~2

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

Date of Decision: 06.05.2016

\+ **MAC.APP. 16/2013**

NATIONAL INSURANCE CO. LTD. ..... Petitioner
Through Mr. Pankaj Seth, Adv.

versus

CT ASHOK KUMAR AND ORS ..... Respondents
Through Mr. Amir Yadav, Adv. for R-1

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The first respondent (claimant) was serving as a constable in Delhi Police on 09.04.2001. While travelling in bus bearing No.DL 1PA 5748 (the offending vehicle) driven by the second respondent, he met with an accident at about 3.05 PM at a place called Dhaula Kuan Circle when he lost balance as alighting from the bus which had been earlier stopped on his request but put in sudden motion. The claimant belatedly filed an accident claim case (for reasons which have not been explained) on 27.08.2003, more than two years and four months after the accident.

2. The accident claim case (MACP No.152/11/10), as presented before the motor accident claims tribunal (tribunal), was directed against the second respondent (he being the driver of the offending vehicle) and the third respondent (he being the registered owner of the offending vehicle). In

spite of notice, both the said respondents would not appear and opted to suffer the proceedings *ex parte*. The tribunal after *ex parte* inquiry rendered its judgment on 05.07.2010 awarding compensation in the sum of ₹45,000/- with interest at 7.5% per annum restricted for a period of four years, referring in this context to the delay caused by the claimant himself. By the said judgment, the driver and owner were held jointly and severally liable.

3. At a stage when the award was sought to be enforced by execution application brought by the claimant, the driver and owner moved the tribunal with application under Order 9 Rule 13 of the Code of Civil Procedure, 1908 (CPC) seeking to explain the default in appearance earlier. The said application under Order 9 Rule 13 CPC was allowed by the tribunal by order dated 11.02.2011, upon the claimant submitting his no objection. In the proceedings, thus revived, National Insurance Co. Ltd. (appellant) came to be impleaded as the third respondent and also called by notice.

4. In the proceedings on the claim petition, after revival and impleadment of the insurance company, the driver and owner filed written statement denying the case about involvement of the vehicle and negligence. The insurance company admitted the insurance cover but denied its liability in case the driver was not able to show that he held valid or effective driving licence. It may be mentioned that this defence was not pressed thereafter. The tribunal, after fresh inquiry, again held, by judgment dated 21.09.2012, that the claimant had suffered injuries due to negligence on the part of the driver of the offending vehicle and, thus, found a case made out for compensation to be awarded. This time, the tribunal computed the compensation in the sum of Rs.92,262/-, thus:

1	*Loss of income(₹ 3736 X 4)*	*:*	*Rs 32,262/-*
2	*Pain and Suffering*	*:*	*Rs. 30,000/-*
3	*Special Diet*	*:*	*Rs. 10,000/-*
4	*Conveyance*	*:*	*Rs 10,000/-*
5	*For loss of discomfort (sic)and pleasure*	*:*	*Rs 10,000/-*
	Total	*:*	*Rs. 92,262/-*
	(Rupees Ninety Two Thousand Two hundred Sixty two only)		

5. The tribunal directed the insurance company to pay the compensation with interest at 7.5% per annum from the date of filing of the petition till realization.

6. The insurance company is in appeal submitting that the claimant had been fully satisfied with the award earlier granted and had even proceeded to execute it. In this view, per the submission, enhanced award is uncalled for. The insurance company also argues that the denial of interest beyond a certain period for well laid out reasons by the earlier judgment of the tribunal, should have been taken into account by the tribunal in the second judgment rendered on 21.09.2012 and, thus, the grant of interest from the date of petition amounts to unfairly burdening the insurance company with enhanced liability for reasons for which it cannot be blamed.

7. It is noted that in the earlier judgment, the tribunal had noted that the claimant had to remain absent from duty for a period of four months. Yet, no compensation was awarded on that account. In these circumstances, the addition of Rs.32,262/- which represents the pay of 130 days for which the claimant had to remain absent from duty (wrongly mentioned in para 18 to be the pay of four months at Rs.3,736/- per month), cannot be faulted.

8. The amount of Rs.40,000/- towards pain & suffering earlier assessed

is now shown in the second judgment split into two heads, one of Rs.30,000/- towards pain & suffering and another of Rs.10,000/- for loss of comfort and pleasure. Therefore, there is no error in that regard. Undoubtedly, the award of Rs.5,000/- as granted earlier should have been maintained instead of being enhanced and further added by damages for conveyance, for which no evidence was adduced.

9. In these circumstances, the award is reduced by Rs.15,000/- and is now calculated as (92,262 – 15,000) Rs.77,262/-, rounded off to Rs.77,500/-

10. There is merit in the contention of the insurance company on the issue of interest. The laches on the part of the claimant are writ large on the face of record. He had suffered accident on 09.04.2001. He filed the claim petition on 27.08.2003 with no explanation for delay. The tribunal's record shows, as was noted in the earlier judgment dated 05.07.2010, that unnecessary adjournments were taken by the claimant leading to protracted proceedings. The claimant submitted no objection to the prayer under Order 9 Rule 13 CPC and it was only at this stage that need for calling he insurance company arose. The insurance company, thus, must not be burdened with liability towards interest beyond the period of four years in the earlier proceedings concluding with judgment dated 05.07.2010. The claimant, however, shall be entitled to further interest from 11.02.2011 (the date on which, application under Order 9 Rule 13 CPC was allowed) onwards till realization. The appeal is allowed with above modification to the award.

11. The insurance company had deposited the entire awarded amount with up-to-date interest with UCO Bank, Delhi High Court branch in terms of order dated 07.01.2014, the entire amount having been kept in fixed

deposit receipt. By order dated 05.04.2013, 60% of such deposit was allowed to be released. The Registrar General shall calculate the balance payable to the claimant in terms of the modified award and release the same refunding the excess with the statutory deposit to the insurance company.

12. The appeal is disposed of with above directions.

R.K. GAUBA
(JUDGE)

MAY 06, 2016
VLD