$~R-457

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 10th November, 2017

\+ MAC.APP. 153/2012

GIRISH KUMAR SHUKLA ..... Appellant

Through: Mr. O.P. Mainee, Adv.

versus

MOHD. WASEEM & ORS ..... Respondents

Through: Mr. J.P. N. Shahi, Adv. for R-3.

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

JUDGMENT (ORAL)

1. The appellant, then 46 years old, had suffered injuries in a motor vehicular accident that took place on 07.10.2009, due to negligent driving of bus bearing registration no. DL 1PB 6076, which was admittedly insured against third party risk with the third respondent (insurer) for the period in question. The injuries suffered included compound grade III fracture of both bones of the right leg. The treatment that was undergone included surgical procedure wherein the fracture was treated with fixation of external fixator

besides skin grafting. The tribunal found in the inquiry that the claimant has been rendered permanently disabled, his functional disability being assessed to the extent of 21%. It also returned a finding that the accident was caused due to negligent driving of the bus by the first respondent, awarded compensation in the total sum of Rs. 5,98,650/-, fastening the liability on the insurer to pay, though granting it recovery rights against the second respondent (insured) for the reason the first respondent was not holding a valid or effective driving licence at the time of the accident. The compensation includes, Rs. 2,26,044/- towards loss of earning capacity on account of disability arising from the injuries and Rs. 1,16,573/- towards medical expenditure.

2. The appeal seeking enhancement is pressed by the claimant on the ground that in calculating the future earnings due to disability, the tribunal did not add the element of future prospects of increase in income. It is noted that the claimant was in service of a private company at a salary of Rs. 6900/- per month. Having regard to the terms and conditions of engagement (as proved by appointment letter Ex.PW-3/5) it is clear that the employment was regular and permanent. Having regard to the age at which the disability was suffered, the future prospects to the extent of 30% deserve to be added [see judgment of the Constitution Bench of the Supreme Court rendered on 31.10.2017 in *SLP (C) 25590/2014, National Insurance Company Ltd. Vs. Pranay Sethi and Ors.*].

3. Thus, the loss of earning capacity due to disability is recalculated as (6900 x 130 ÷ 100 x 21 ÷ 100 x 12 x 13) Rs. 2,93,857.20 rounded off to Rs. 2,93,857/-. In this view, the amount of compensation under this head needs to be increased by (2,93,857/- 2,26,044/-) Rs. 67,813/-.

4. The learned counsel for the appellant then points out that the claimant had also shown by additional evidence led during the proceedings arising out of the appeal, the statements of the appellant himself (AW-2) and of Vinod Kumar (AW-1) record incharge of Ram Lal Kundan Lal Orthopaedic Hospital that the appellant has undergone further surgical procedure during 14.12.2012 for removal of the implant incurring further medical expenditure of Rs. 41,107/-, (Ex.AW-2/1 to AW-2/7). The said amount of Rs. 41,107/-, thus, deserves to be granted additionally towards further medical expenditure.

5. For the foregoing reasons, the award is increased to (5,98,650 + 67,813 + 41,107) Rs. 7,07,570/-, rounded off to Rs. 7,08,000/- (Rupees Seven Lakhs Eight Thousand Only).

6. Following the consistent view taken by this Court, the rate of interest is increased to 9% (nine percent) per annum from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*].

7. The award is modified accordingly. The third respondent (insurer) is directed to satisfy the enhanced award by requisite deposit with the tribunal within thirty days. It is made clear that this will not disturb the recovery rights already granted to the insurer.

8. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 10, 2017
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