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

Decided on: 10th October, 2017

\+ MAC APPEAL No. 167/2011

SHRIRAM GENERAL INSURANCE. CO. LTD ....Appellant

Through: Mr. Pankaj Seth, Adv.

versus

AKBAR ALI & ORS. ..... Respondents

Through: None.

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

<u>JUDGMENT (ORAL)</u>

1. The first respondent, then 23 years old, working as a manual labour, suffered injuries in a motor vehicular accident that occurred on 04.08.2008 due to negligent driving of motor vehicle described as Mahindra Champion bearing registration no. DL 1LF 7496, the injuries resulted in his left foot through ankle being amputated leaving him permanently disabled. On his accident claim case (suit 44/10/2008) instituted on 15.09.2008, the motor accident claims tribunal, by its judgment dated 21.12.2010, awarded compensation in the total sum of Rs. 21,01,002/-, directing the appellant insurance company to pay with interest @ 7.5% per annum, the appellant being the insurer against third party risk in respect of the said vehicle, the amount having been calculated thus:-

S.No.	Heads	Compensation
1.	Compensation for expenses incurred on medical treatment	Rs. 70,178/-
2.	Compensation conveyance charges	Rs. 15,000/-
3.	Compensation for special diet expenses	Rs. 10,000/-
4.	Compensation for loss of earning capacity	Rs. 12,55,824/-
5.	Compensation for pain & suffering	Rs. 1,00,000/-
6.	Compensation for loss of amenities of life	Rs. 1,00,000/-
7.	Compensation for physical disfigurement due to disability	Rs. 1,00,000/-
8.	Compensation for cost of affixation artificial limb	Rs. 4,50,000/-
	Total	Rs. 21,01,002/-

2. The appeal by the insurer is pressed at the hearing to challenge the calculation of loss of earning capacity on account of permanent disability. It is argued that the tribunal fell into error by treating it as a case of functional disability to the extent of 100% and factoring in the element of future prospects of increase while computing the loss of earning capacity due to such disability.

3. The appeal was admitted and put in the category of 'regulars' to be taken up on its own turn by order dated 23.07.2012. When it is

taken up for hearing, the first respondent who had due notice has failed to appear to assist.

4. Having heard the learned counsel for the appellant, this Court finds the above-noted two contentions to be correct. The amputation of the left foot has been considered by the medical opinion to be a permanent disability to the extent of 45% as certified by disability certificate (Ex.PW-2/46) issued by Office of Chief Medical Officer, Faizabad, UP. Having regard to the nature of job in which the claimant was engaged, the functional disability could not have been treated as 100%. However, the same would not be as low as indicated by the medical opinion. This Court treats the case one of functional disability to the extent of 60% (sixty per cent).

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 12.01.2015, 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. Since the income was assessed with the help of minimum wages (Rs. 3876/- per month), there being no proof of regular employment much less of progressive rise in income, the element of future prospects is kept out. On the multiplier of 18, the loss of earning capacity due to disability is recomputed as (3876 x 60 ÷ 100 x 12 x 18) Rs.5,02,329.6, rounded off to Rs. 5,02,330/-. The award under the loss of earning capacity is thus to be reduced by (12,55,824 – 5,02,330) Rs. 7,53,494/-.

8. It is however, noted that the compensation under the heads of pain & suffering and loss of amenities of life is on the lower side. The same are increased to Rs. 1,50,000/- each. Thus, the award would require to be reduced by (7,53,494 – 1,00,000) Rs. 6,53,494/-. The total award is modified and reduced to (21,01,002 – 6,53,494) Rs. 14,47,508/-, rounded off to Rs. 14,48,000/- (rupees fourteen lakhs forty eight thousand only). Needless to add, the interim compensation of Rs. 25,000/- will have to be adjusted.

9. Following the consistent view taken by this Court, the rate of interest is increased to 9% (nine per cent) 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*.]

10. By order dated 23.02.2011, the insurance company had been directed to deposit the entire awarded amount with upto date interest and out of such deposit 75% was allowed to be released. The registry shall now calculate the balance amount payable to the claimant in terms of the modification ordered above and release the same from out of the balance lying in deposit to the claimant, refunding the excess, if any, to the insurance company. Conversely, if there is any deficiency in the deposit, the insurance company is obliged to deposit the same with the tribunal within thirty days.

11. The statutory amount shall be refunded to the appellant.

R.K.GAUBA, J.

OCTOBER 10, 2017
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