$~R-465

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 10th November, 2017

\+ MAC.APP. 225/2012

RAJ KUMAR ..... Appellant

Through: Mr. Amit Kumar Pandey, Adv.

versus

RELIANCE GENERAL INSURANCE CO. LTD & ORS. ...... Respondents

Through: Mr. Shoumik Mazumdar, Adv. for R-1.

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

<u>JUDGMENT (ORAL)</u>

1. The appellant, then 38 years, earning his livelihood as a vegetable seller, suffered injuries in motor vehicular accident that took place on 04.12.2009, due to negligent driving of truck bearing registration no. DL 1LG 2127, which was admittedly insured against third party risk with the first respondent (insurer). It may be mentioned at the outset that the injuries suffered were in both the lower limbs and inspite of treatment, the right leg had to be amputated above knee rendering him permanently disabled, such condition having been certified (Ex.PW-1/22) by a board of doctors of Pandit Madan Mohan Malaviya Hospital to be physical impairment to the extent of 85% in relation to both lower limbs. The Tribunal held inquiry into his accident claim case (suit no. 38/2010), instituted on

23.01.2010, and returned a finding that the accident had occurred due to negligence on the part of third respondent holding him and the second respondent (the owner of the truck) jointly and severally liable and to pay compensation. By judgment dated 29.08.2011, the tribunal awarded compensation in the sum of Rs. 6,03,300/- calculating it thus:

S.No.	Heads	Compensation
1.	Treatment expenses	Rs. 23,300/-
2.	Special diet and conveyance	Rs. 20,000/-
3.	Permanent disability & loss of income & permanent disability	Rs. 3,60,000/-
4.	Pain and sufferings	Rs. 1,00,000/-
5.	Loss of expectations of life, disappointment, frustration and mental stress	Rs. 1,00,000/-
	Total	Rs. 6,03,300/-

2. The appeal at hand was filed and is pressed for enhancement on the ground that the functional disability has been under-assessed to the extent of 50%. The claimant also presses for separate awards to be granted towards disfigurement and for loss of amenities of life.

3. Having heard the learned counsel on both sides and having perused the record, this Court finds the above-mentioned contentions to be correct. Following the view taken in similarly placed case in MAC Appeal No. 1068/2016 *National Insurance Company Ltd. vs. Priti Gupta & Ors.* decided on 24th August, 2017, the functional disability is taken as 80% (eighty per cent). In view of the ruling of a 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.*, the element of future prospects of increase to the extent of 40% is also added.

4. The loss of future income due to permanent disability is, thus, recomputed as (3953 x 140 ÷ 100 x 80 ÷100 x 12 x 15) Rs. 7,96,924.80/- rounded off to Rs. 7,96,925/-. Since the tribunal had granted Rs.3,60,000/- under this head, the award on this account is increased by (7,96,925/- – 3,60,000/-) Rs.4,36,925/-.

5. The claimant also presses for appropriate enhancement under the non-pecuniary damages submitting that they are inadequate. The tribunal has awarded Rs. 1,00,000/- each under the heads of pain & suffering on one hand and loss of expectation of life, disappointment, frustration and mental stress on the other. The second mentioned head would also cover the claim towards disfigurement. However, given the nature of handicap suffered, they are indeed inadequate and, therefore, increased to Rs. 1,50,000/- each. Further, an amount of Rs. 1,00,000/- is added towards loss of amenities of life.

6. Thus, there shall be net increase in the award by (4,36,925 + 50,000 + 50,000 + 1,00,000) Rs. 6,36,925/-. The total compensation is increased to (6,03,300 + 6,36,925) Rs. 12,40,225/-, rounded off to Rs. 12,41,000/- (Rupees Twelve Lakh Forty One Thousand Only).

7. 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*.]

8. The first respondent is directed to satisfy the enhanced award by requisite deposit with the tribunal within thirty days making it available to be released to the claimant. It is directed that the entire payment now to be made under the above modification shall be released in the form of interest bearing fixed deposit receipt taken out from a nationalized bank in the name of the claimant for a period of ten years with right to draw periodic interest.

9. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 10, 2017
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