$~R-478

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 14th November, 2017

\+ MAC.APP. 329/2012

ORIENTAL INSURNACE CO. LTD. ..... Appellant

Through: Mr. A.K. Soni, Adv.

versus

JAWAHAR SINGH CHAUHAN & ORS. ..... Respondents

Through: None.

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

JUDGMENT (ORAL)

1. The first respondent (claimant) was 42 years old, working as a Manager in Canara Bank, when on 14.01.2008 he suffered injuries in a motor vehicular accident that occurred due to negligent driving of motor vehicle bearing registration no. DL 1PB 1647, admittedly insured against third party risk for the period in question with the appellant (insurer). On his accident claim case (MACT Suit no. 533/09/08) instituted on 25.02.2008, the tribunal held inquiry and, by judgment dated 09.01.2012, awarded compensation in the total sum of Rs. 11,28,000/-, fastening the liability on the insurer to pay with interest @ 7.5% per annum, the said amount inclusive of Rs. 10,05,956/- as loss of future income due to functional disability

assessed at 17%, besides the other awards towards conveyance charges, special diet, pain & suffering and loss of amenities of life.

2. The appeal by the insurer is pressed only on the contention that since there was no proof of loss of employment or earnings, the claimant having continued to be in the same service, the loss of future income due to disability should not have been calculated with the multiplier of 14.

3. The appeal was put in the list of 'regulars' to come up on its own turn as per order dated 19.02.2016. When it is taken up for hearing, there is no appearance on behalf of the claimant. The matter has been heard with the assistance of the counsel for the insurer and by perusal of the record.

4. The above-noted contention deserves to be accepted as there was no loss of employment. Assumably, the claimant would continue in the same service upto the age of 60 years. Therefore the multiplier of 9 would apply. Thus, the loss of future income due to disability is recomputed as (71854 x 9) Rs. 6,46,686/-. Since the tribunal awarded Rs. 10,05,956/- under this head, the award is to be reduced by (10,05,956 – 6,46,686) Rs. 3,59,270/-. The total award is, thus, reduced to (11,28,000- 3,59,270) Rs. 7,68,730/-, rounded off to Rs. 7,69,000/- (Rupees Seven Lacs and Sixty Nine Thousand Only).

5. Following the consistent view taken by this Court, the rate of interest is, however, increased to 9% 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*.].

6. By order dated 26.03.2012, the insurance company had been directed to deposit 75% of the awarded amount with upto date proportionate interest with the Registrar General. By subsequent order dated 01.10.2012, 50% of the awarded amount was permitted to be released to the claimant. The registry shall now calculate the balance amount payable to the claimant under the modified award and release the same from the remainder held back in deposit, refunding the excess, if any, to the insurance company. Conversely, if so required, the insurance company will deposit the balance of its liability under the modified award with the tribunal within thirty days making it available to be released to the claimant.

7. The statutory amount shall be refunded after proof is shown of the award having been satisfied.

R.K.GAUBA, J.

NOVEMBER 14, 2017
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