$~R-497

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 16th November, 2017

\+ MAC.APP. 443/2012

NATIONAL INSURANCE CO. LTD. .... Appellant

Through: Mr. Pankaj Seth, Adv.

versus

MOHAN LAL & ORS. ..... Respondents

Through: None.

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

JUDGMENT (ORAL)

1. The first respondent (the claimant) had instituted accident claim case (MACT Case No. 296/10/07) on 15.11.2007 seeking compensation under Section 166 of Motor Vehicles Act, 1988 for injuries suffered by him in motor vehicular accident that took place on 10.10.2007 involving negligent driving of bus bearing registration no. DL 1PB 1350, admittedly insured against third party risk with the appellant (insurer) for the period in question. After inquiry, the tribunal, by judgment dated 19.01.2012, accepted the case for compensation holding the bus driver responsible. It computed compensation in the total sum of Rs. 7,71,284/-, calculating it thus:-

Sl.No.	Heads	Compensation
1.	Loss of income	Rs. 10,548/-
2.	Loss of earning capacity	Rs. 4,60,736/-

3.	Special diet	Rs. 10,000/-
4.	Conveyance charges	Rs. 20,000/-
5.	Attendant charges	Rs. 20,000/-
6.	Pain & sufferings	Rs.1,00,000/-
7.	Loss of amenities and enjoyment of life	Rs. 1,00,000/-
8.	Future medical expenses	Rs. 50,000/-
	TOTAL	Rs. 7,71,284/-

2. The liability to pay compensation with interest @ 7.5% per annum has been fastened against the insurer which is in appeal to question the calculation of the award.

3. The appeal was admitted and put in the list of 'regulars' as per order dated 02.11.2012. When it is taken up for hearing, there is no appearance on behalf of the claimant.

4. The learned counsel for the insurance company has been heard and with his assistance record perused.

5. The appeal is pressed at the hearing to question the inclusion of element of future prospects of increase to the extent of 50% over and above the income notionally assessed with the help of minimum wages (Rs.3516/-) for calculating the loss of earning capacity due to functional disability evaluated at 52%.

6. Having regard to the ruling 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.*, taking

in view the fact that the claimant was 43 years old at the relevant point of time, future prospects will have to be restricted to 25%.

7. Thus, loss of future earning on account of functional disability is recomputed as (3516 x 125 ÷ 100 x 52÷ 100 x 12 x 14) Rs. 3,83, 947/-. The award under this head is liable to be reduced by (4,60,736 – 3,83,947) Rs. 76,789/-.

8. The total compensation in the case is reduced to (7,71,284 – 76,789) Rs. 6,94,495/-, rounded off to Rs. 6,95,000/- (Rupees Six Lacs and Ninety Five Thousand Only).

9. 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*.]

10. By order dated 27.04.2012, the insurance company had been directed to deposit the entire awarded amount with upto date interest with interest with UCO Bank, Delhi High Court Bank. By subsequent order 02.11.2012, 75% of the deposited amount was permitted to be released to the claimant. The registry shall now calculate the balance payable to the claimant under the modified award and release the same, refunding the excess, if any, in deposit with the corresponding interest to the insurance company along with statutory deposit.

11. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 16, 2017/nk