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

Decided on: 17th August, 2017

\+ MAC.APP. 1031/2016 and CM No.45093/2016

THE UNITED INDIA INSURANCE CO LTD ..... Appellant
Through: Mr. S.P. Jain, Advocate

versus

SAHIL SHARMA @ SAHIL & ORS ..... Respondents
Through: Mr. Rajesh Pandey and Ms. Anuradha Pandey, Advocates

\+ MAC.APP. 170/2017

SAHIL SHARMA @ SAHIL ..... Appellant
Through: Mr. Rajesh Pandey and Ms. Anuradha Pandey, Advocates

versus

MANMEET SINGH & ORS ..... Respondents
Through: Mr. S.P. Jain, Advocate for R-3

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

JUDGMENT (ORAL)

1. Sahil Sharma (appellant in MACA 170/2017 and first respondent in MACA 1031/2016), then a student of the degree course of Bachelor of Arts, aged 20 years, was riding on a scooty bearing registration no.DL-9SY-8585 on 21.08.2012 when it came to be involved in a collision with bus bearing registration no.DL-1PC-7222

(the bus) admittedly insured against third party risk with United India Insurance Company Ltd. (appellant in MACA 1031/2016 and third respondent in MACA 170/2017). The injuries rendered him totally blind in both eyes, he having become permanently disabled, his disability having been certified (Ex.PW4/1) to be 100%, this in addition to neurological disability to the extent of 75% on account of quadriparesis. The accident claim case (MACT 476457/2016, old case no.32/2014) was instituted on his behalf on 21.02.2013 in the wake of a detailed accident report (DAR) submitted by the police on the basis of evidence gathered during the investigation into FIR no.222/2012 of police station Vikas Puri under Sections 279 / 338 IPC, prosecuted through his mother (natural guardian) Anju Sharma, who also appeared as witness (PW-7) during the inquiry.

2. The Motor Accident Claims Tribunal (Tribunal), by judgment dated 15.09.2016, upheld the case of claim for compensation on account of negligent driving of the bus and awarded compensation in the total sum of Rs.44,87,372/-, fastening the liability on the insurance company, calling it upon to pay with interest at the rate of 9% p.a.

3. The insurance company, by its appeal (MACA 1031/2016), has raised the argument of contributory negligence on the basis of evidence of Ashok Kumar (PW-9), a tea vendor, who was examined as an eye witness. It is submitted that the deposition of the said witness would show that the claimant was not wearing a helmet on his head at the time of the collision. The evidence of PW-9, when carefully read, shows that he only deposed that he had not seen any helmet lying at the scene of the collision after the occurrence. From

this, it cannot be deduced that the claimant was not wearing a helmet at the time of the accident. The witness may not have noticed the helmet. The omission on the part of the eye witness to see the helmet at the scene cannot lead to the inference sought to be drawn. The plea is, thus, rejected.

4. The insurance company also submits that PW-7, the mother of the claimant, in the course of her testimony had admitted that an amount of Rs.2 Lakhs had been received towards the medical treatment from the office of the father of the claimant. It is pointed out that another witness K.B. Tiwari (PW-3), senior Executive of Accounts Branch of Dr. B.L. Kapur Memorial Hospital, where the treatment was arranged, during the course of his testimony had also confirmed that an amount of Rs.2 Lakh had been paid by "TPA", the balance having been paid by the father of the claimant in cash. The argument of the insurance company is that the said amounts of Rs.2 Lakhs had to be deducted from the award under the head of medical expenditure.

5. The learned counsel for the claimant, on the other hand, explained that the amount referred to by PW-3 is the same amount as is admitted to have been reimbursed by the employer of her husband by PW-7. The expression "TPA" has not been explained. No clarity was sought from the witness when he was examined. In absence of any better particulars, the submission of the counsel for the claimant cannot be rejected. Assumably, both the witnesses were speaking about the same amount. It is noted that this amount has not been

included in the medical expenditure, reimbursement whereof is included in the award granted by the tribunal.

6. Thus, the plea of the insurance company cannot be accepted.

7. The appeal of the claimant (MACA 170/2017) is pressed at the hearing only on one ground, it being the inadequate damages towards future need for domestic / attendant charges, the amount included in the award being Rs.1 Lakh only. Given the fact that the claimant has been rendered permanently disabled, he would undoubtedly be dependent on an attendant to assist him in his day-to-day chores. In these circumstances, rather than a lumpsum amount being added, the proper course would be to grant minimum wages of an unskilled worker on the multiplier of 18.

8. The accident having occurred on 21.08.2012, the minimum wages of Rs.7,020/- is treated as the benchmark. After deducting one-third, an amount of Rs.10,10,880/- deserves to be added under the head of arrangement for attendant, this, in lieu of the amount of Rs.1 Lakh. This means the compensation would need to be enhanced by (Rs.10,10,880/- (-) Rs.1,00,000/-) Rs.9,10,880/-.

9. Adding the above amount to the compensation awarded by the tribunal, the total compensation payable in the case comes to (Rs.44,87,372/- + Rs.9,10,880/-) Rs.53,98,252/-, rounded off to Rs.53,99,000/-. The award is enhanced accordingly. It shall carry interest as levied by the tribunal.

10. The insurance company has already deposited the amount awarded by the tribunal with corresponding interest with the tribunal. The said amount shall now be released to the claimant in terms of the

award. The insurance company shall satisfy the enhanced portion of the award by requisite deposit with the Tribunal within 30 days whereupon the said portion shall also be released to the claimant in the form of an interest bearing fixed deposit receipt in a nationalized bank for a period of ten years with liberty to draw periodical interest.

11. The statutory amount shall be refunded to the insurance company.

12. Both the appeals and the pending applications are disposed of in above terms.

R.K.GAUBA, J.

AUGUST 17, 2017
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