$~R-667 & 668

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

Decided on: 07th December, 2017

\+ MAC APPEAL 1211/2012 and CM 19600/2012

RELIANCE GENERAL INSURANCE COMPANY LTD. ..... Appellant

Through: Mr. Pankaj Seth, Advocate

versus

AMARJEET SINGH & ORS. ..... Respondents

Through: None

\+ MAC APPEAL 352/2013

AMARJEET SINGH & ORS. ..... Appellants

Through: None

versus

RELIANCE GENERAL INSURANCE COMPANY LTD. ..... Respondent

Through: Mr. Pankaj Seth, Advocate

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

JUDGMENT (ORAL)

1. Amarjeet Singh (the claimant) had instituted accident claim case (MACT 392/2008) on 03.07.2009 seeking compensation for the injuries sustained and the disability consequently suffered in a motor vehicular accident that had taken place on 28.03.2009 due to negligent driving of a motor vehicle described as JCB bearing registration

no.HR-69-8650, which was admittedly insured against third party risk for the period in question with Reliance General Insurance Company Ltd. (insurer). The offending vehicle was proved to have been driven negligently by Roshan Singh, driver and owned by Pradeep Singh (owner), respondents in these appeals. The tribunal held both of them jointly and severally liable to pay compensation. It determined compensation in the total sum of Rs.15,93,226/- calculating it thus :-

PECUNIARY DAMAGES (Special damages)	
Medical expenses	Rs.6,50,000/-
Loss of future income	Rs.7,43,526/-
Special diet expenses	Rs.25,000/-
Conveyance charges	Rs.25,000/-
NON-PECUNIARY DAMAGES (GENERAL DAMAGES)	
Pain, suffering, mental shock and trauma	Rs.1,50,000/-
Total	Rs.15,93,226/-

2. The liability to pay the compensation was fastened on the insurer, its plea about breach of the terms and conditions of the insurance policy having been rejected on the reasoning that it had failed to prove its case in this regard.

3. The insurer, by its appeal (MACA 1211/2012), questions the award on the ground that the tribunal fell into error by assuming the functional disability to the extent of 70% and by adding the element of

future prospects of increase in income to the extent of 50% for calculating the loss of income in future due to disability. It also submits the grievance that its evidence on the issue of breach of the terms and conditions of the insurance policy was overlooked and not even discussed.

4. *Per contra*, the claimant by his appeal (MACA 352/2013) argues that the tribunal has not granted adequate compensation, the award in the sum of Rs.1,50,000/- under the composite head of pain and suffering, mental shock and trauma, being inadequate.

5. The disability has occurred on account of amputation of the right lower limb below knee. In a similarly placed case which was subject matter of *MACA 563/2009, Oriental Insurance Co. Ltd. Vs. Smt. Sushila & Ors.*, decided on 23.08.2017, such condition has been taken as leading to functional disability to the extent of 60%. Having regard to the parity with the present case, the loss of income in future due to disability requires to be assessed accordingly.

6. Following the ruling of a 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 in income has to be restricted to 40%. The loss of income in the future due to disability is thus re-calculated as [Rs.3,934/- x 140/100 x 60/100 x 12 x 15] Rs.5,94,820.80, rounded off to Rs.5,95,000/-.

7. The grievance of the claimant about inadequacy of the general damages is correct. In lieu of the composite award, Rs.1,50,000/- is

added towards pain and suffering and Rs.1,50,000/- is further added under the head of loss of amenities of life.

8. Thus, the total compensation in the case, putting together other heads of damages, is calculated as [Rs.6,50,000/- + Rs.5,95,000/- + Rs.25,000/- + Rs.25,000/- + Rs.1,50,000/- + Rs.1,50,000/-] Rs.15,95,000/- (Rupees Fifteen Lakh and ninety five thousand only). The award is modified accordingly. It shall carry interest as levied by the tribunal.

9. The tribunal's record would show that the insurer had led evidence on the issue of breach of the terms and conditions of the insurance policy by examining Dr. Ajay Kumar Pandey (R3W1), District Transport Officer, Saran Chhapra, Bihar and Rakesh Sonkar (R3W2), Manager, Reliance General Insurance Co. Noticeably, the evidence of the said witnesses was not even discussed by the tribunal in the impugned judgment. The observation that the insurer had failed to discharge its onus to prove in such regard is thus perverse and therefore, cannot be sustained. In the facts and circumstances, it will be proper to remit the case to the extent of consideration of the plea of recovery rights to be granted to the tribunal for adjudication.

10. By order dated 23.11.2012 on the file of MACA 1211/2012, the insurance company had been called upon to deposit 50% of the awarded amount with up-to-date proportionate interest with UCO Bank, Delhi High Court Branch, and by order dated 08.04.2013, fifty percent (50%) of the deposited amount was permitted to be released to the claimant. Since the compensation has been enhanced, though marginally, the entire balance in deposit shall be released to the

claimant in terms of the judgment of the tribunal. The insurer will be obliged to satisfy the entire enhanced award by requisite deposit of the balance with the tribunal within 30 days making it available to be released.

11. The issue of recovery rights is remitted to the tribunal for further inquiry and appropriate adjudication. For such purposes, the parties particularly, the insurer, driver and owner of the offending vehicle are directed to appear before the tribunal on 08.02.2017. If the claimant so chooses, he may also participate in such inquiry.

12. The statutory amount paid by the insurance company will be refunded after proof is shown of the award having been satisfied.

13. Both appeals and the pending application are disposed of in above terms.

R.K.GAUBA, J.

DECEMBER 07, 2017
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