$~R-647 and R-650

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

Decided on: 06th December, 2017

\+ MAC APPEAL 1168/2012 and CM 18881/2012

NEW INDIA ASSURANCE COMPANY LTD. ..... Appellant
Through: Mr. Praveen Sehrawat and Mr. Abhishek Kumar, Advocate

versus

VIKAS KUMAR & ORS. ..... Respondents
Through: Mr. O.P. Mannie, Adv. for R-1

\+ MAC APPEAL 346/2014

VIKAS KUMAR & ORS. ..... Appellants
Through: Mr. O.P. Mannie, Adv. for A-1

versus

NEW INDIA ASSURANCE COMPANY LTD. & ANR. ... Respondents
Through: Mr. Praveen Sehrawat and Mr. Abhishek Kumar, Advocate

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

JUDGMENT (ORAL)

1. Both these appeals arise out of the judgment of the Motor Accident Claims Tribunal (Tribunal), dated 23.03.2012 in accident claim case (MACT 368/10/06), instituted on 31.03.2006, by Vikas Kumar, appellant in MACA 346/2014 and first respondent in MACA

1168/2012 (hereinafter referred to as the "claimant"). By the said judgment, the tribunal awarded compensation in the total sum of Rs.11,13,539/-, in favour of the claimant for the injuries suffered by him in a motor vehicular accident that occurred on 17.02.2006 due to negligent driving of a truck bearing registration no.HR-39-3351 which was admittedly insured against third party risk for the period in question with New India Assurance Company Ltd., appellant in MACA 1168/2012 and first respondent in MACA 346/2014 (hereinafter, referred to as the "insurer").

2. The liability to pay the above mentioned amount was fastened on the insurer with interest at the rate of 7.5% p.a. levied, the amount having been calculated thus :-

A. PECUNIARY DAMAGES (SPECIAL DAMAGES)	
Medical Bills & Expenses	Rs.2,23,995/-
Future medical expenses	Rs.25,000/-
Special diet	Rs.30,000/-
Conveyance charges	Rs.30,000/-
Loss of income	Rs.22,314/-
Future loss of income	Rs.5,42,230/-
B. NON PECUNIARY DAMAGES (GENERAL DAMAGES	
Loss of amenities and enjoyment of life	Rs.70,000/-
Loss of marriage prospects and shortening of life	Rs.1,00,000/-
Pain and suffering, inconvenience, frustration, hardship and trauma	Rs.70,000/-

TOTAL	Rs.11,13,539/-

3. The insurer by its appeal (MACA 1168/2012) questions the award on the grounds that the compensation granted is excessive, as future prospects have been wrongly added, the functional disability assessed is unduly high and that non-pecuniary heads of damages included in the award are unduly high.

4. *Per contra*, the claimant by his appeal (MACA 346/2014), argues that the award is inadequate as the income has been wrongly assessed with the help of minimum wages and that it should have been accepted at Rs.5,000/- p.m. The claimant also submits that the award should have included attendant charges and that the rate of interest levied is unduly low.

5. It is noted that the claimant had suffered grievous injuries in the lower limbs. He was examined by a board of doctors of Babu Jagjeevan Ram Memorial Hospital, Jahangir Puri of the Govt. of NCT of Delhi, which issued disability certificate (Ex. PW6/285) to the effect that he is a case of permanent physical impairment to the extent of 45% in relation to the crush injury in the left thigh with stiffness of the left knee. The tribunal has taken the functional disability at 45% and granted the award of future loss of income on such basis.

6. It is noted that the claimant had pleaded that he was a qualified draftsman and earning his livelihood accordingly, his income being in the sum of Rs.5,000/- p.m. He produced National Trade Certificate (Ex. PW6/262), showing that he had completed the course of training leading to the diploma in the trade of Draftsman (Mechanical) in July,

2004. But then, there was no clear proof adduced of any regular employment or earnings. The tribunal assumed the income notionally on the minimum wages of an unskilled worker at Rs.3,719/- p.m. (which were payable for matriculate).

7. The calculation by the tribunal, however, fell into error by adding the element of future prospects of increase in income to the extent of 50%. Going by 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*., this will have to be capped at 40%. Thus, while there is no case made out for any reduction in the assessment of functional disability, the loss of future income is recomputed as [Rs.3,719/- x 140/100 x 45/100 x 12 x 18] Rs.5,06,081.52, rounded off to Rs.5,06,082/-. The award under the head of loss of future income due to disability is required to be reduced by [Rs.5,42,230/-(-) Rs.5,06,082/-] Rs.36,148/-.

8. It is noted that the intensive treatment had continued till September 2007. Keeping this in mind, award of Rs.50,000/- towards attendant charges is added. The awards under the other heads are found to be just and proper and, therefore, there is no need for any modification in their respect.

9. Consequently, the award needs to be increased marginally by [Rs.50,000/- (-) Rs.36,148/-] Rs.13,852/-. It is, thus, increased to [Rs.11,13,539/- + Rs.13,852/-] Rs.11,27,391/-, rounded off to Rs.11,28,000/- (Rupees Eleven lakh and twenty eight thousand only).

10. It is noted that the rate of interest is on the lower side. 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.*].

11. By order dated 07.11.2012 in MACA 1168/2012, the insurance company had been directed to deposit 75% of the awarded amount with up-to-date interest with the UCO Bank, Delhi High Court Branch and from out of such deposit, fifty percent (50%) of the award was released to the claimant. Since the award has been increased, the Registry shall release the balance lying in deposit with accrued interest to the claimant. The insurer will be obliged to satisfy the enhanced award by requisite deposit with the tribunal within 30 days making it available to be released to the claimant.

12. The statutory amount paid by the insurer shall be refunded after proof is shown of the award having been satisfied.

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

R.K.GAUBA, J.

DECEMBER 06, 2017
yg