$~R-492

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 15th November, 2017

\+ MAC.APP.430/2012

SHRIRAM GENERAL INSURANCE CO. LTD...... Appellant

Through: Mr. Priyadarsi Acharya, Adv.

versus

ANIL SHARMA & ORS. ..... Respondents

Through: Mr. Hanish Saharawat, Adv. for R-1.

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

<u>JUDGMENT (ORAL)</u>

1. The first respondent (claimant) was travelling in Mahindra Champion bearing registration no. DL 1LN 0947 (the vehicle) on 16.10.2010, it being driven by the second respondent (the driver) and suffered injuries when it came to be involved in motor vehicular accident at about 6 p.m. On his accident claim case (MACT 1258/2010) instituted on 14.12.2010, the tribunal upheld the case for compensation holding the second driver responsible for the mishap. The vehicle was admittedly owned by the third respondent and insured against third party risk with the appellant (insurer). The tribunal awarded compensation in the total sum of Rs.16,90,880/-, and fastening the liability to pay with interest @ 7.5% p.a. calculating it thus:-

S.No.	Heads	Compensation
	Pecuniary damages (special damages)	
1.	Medical expenses	Rs. 2,822/-
2.	Loss of future income etc.	Rs. 13,68,058/-
3.	Special diet, conveyance etc.	Rs. 20,000/-
	Non-pecuniary damages (General damages)	
1.	Pain and sufferings& trauma and loss of amenities etc.	Rs. 3,00,000/-
	Total	Rs. 16,90,880/-

2. This appeal was directed to be put in the category of 'regulars' by order dated 11.03.2016. In the context of application (CM No. 41123/2017) moved by the claimant for release of the amount, it came before the Court on 14.11.2017 when it was adjourned for 23.11.2017 though with rider that it would retain its position in the list of 'regulars'. Since the appeal has come up for hearing, in the list of 'regulars' in its turn today, the date 23.11.2017 fixed earlier is cancelled.

3. The insurer, by the appeal at hand, questions the calculation of compensation, particularly the assessment of functional disability taken by the tribunal as 90%. It is noted that due to injuries sustained in the accident, the claimant suffered amputation of left leg below knee. This has rendered him permanently disabled, he having been certified (Ex.PW-1/7) by a board of doctors of Guru Govind Singh Govt. Hospital to be physically disabled to the extent of 70% in

relation to left lower limb. The tribunal took this to be a case of functional disability to the extent of 90% noting that claimant was earning his livelihood as a labourer.

4. In similarly placed case involved in MAC Appeal No. 563/2009 *Oriental Insurance Co. Ltd. vs. Sushila & ors*. decided on 23.08.2017, this Court has taken the functional disability to be 60%. Following the said ruling, suitable correction in the present case would need to be made.

5. In calculating the loss of future income due to functional disability, the tribunal after assuming the notional income with the help of minimum wages (Rs. 5,278) added the element of future prospects of increase to the extent of 50%. Having regard to the ruling of 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 restricted to 40%.

6. Thus calculated, the loss of income due to disability in future is recomputed as (5278 x 140 ÷ 100 x 60÷ 100 x 12 x 16) Rs.8,51,235.84 rounded off to Rs.8,51,236/-. The tribunal had awarded Rs.13,68,058/- under this head. The award would need to be reduced by (13,68,058 - 8,51,236) Rs.5,16,822/-.

7. The awards under other heads are found to be just and adequate.

8. Thus, the total compensation is reduced to (16,90,880 – 5,16,822), Rs. 11,74,058/-, rounded off to Rs. 11,75,000/- (Rupees Eleven Lacs Seventy Five Thousand Only).

9. Following the consistent view taken by this Court, the rate of interest is increased to nine per cent (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. The insurer, however, also submits that the claimant was travelling as gratuitous passenger and, therefore, the insurance company cannot be burdened with the liability to pay. It is noted that the tribunal has observed that, as per the evidence on record, the service of the claimant had been availed by the owner of the vehicle, for loading and unloading of the goods. In these circumstances, the plea is rejected.

11. There being no justification for the addition of Rs.55,000/- towards lawyers charges, the direction to that extent in the impugned judgment is set aside.

12. By order dated 23.04.2012, the entire award had been directed to be held in fixed deposit with UCO Bank, Delhi High Court Branch. By subsequent orders dated 27.07.2012, 12.08.2013 and 25.10.2013, some part of the deposit was released to the claimant. The registry shall now calculate the balance payable to the claimant in terms of the modification ordered above, refunding the excess in deposit, if any, to the insurance company. Conversely, if there is further payment to be made, the insurance company will be obliged to take necessary steps by requisite deposit with the tribunal within thirty days. On the other

hand, if excess has been released, the claimant will be obliged to reimburse the same to the insurance company.

13. The statutory deposit shall be refunded.

14. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 15, 2017
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