$~R-55A & 336

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

Decided on: 5th December, 2017

\+ MAC APPEAL 582/2008

NATIONAL INSURANCE CO. LTD ..... Appellant
Through: Mr. Pradeep Gaur & Mr. Amit Gaur, Adv

versus

K K KAMAL & ORS. ..... Respondents
Through:

\+ MAC APPEAL 413/2011

K K KAMAL & ORS. ..... Appellant
Through:

versus

NATIONAL INSURANCE CO. LTD ..... Respondents
Through: Mr. Pradeep Gaur & Mr. Amit Gaur, Adv

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

<u>JUDGMENT (ORAL)</u>

1. The claimant had suffered injuries in a motor vehicular accident that took place on 19.01.2006 involving negligent driving by the driver of offending vehicle i.e. Bus bearing registration no. DL1PA

5917. Accident claim case 233/06 was instituted on 25.05.2006. The tribunal held an enquiry and, by judgment dated 02.08.2008, accepted the case for compensation under section 166 of Motor Vehicles Act, 1988 holding Shanker (respondent) responsible for negligent driving and causing the said accident. The bus was found to be owned by Vijay Kumar Sharma, another respondent in these appeals. The tribunal awarded compensation in the total sum of Rs.5,96,000/- and directed the insurer to pay the sum along with interest @ 9% pa, calculating it thus:-

S. No.	Head	Amount
1	Nature of injuries and plain and sufferings	18,584/-
2	Pain and sufferings and loss of amenities of life	50,000/-
3	Loss of earning capacity due to permanent disability	5,17,000/-
4	Conveyance and special diet	10,000/-
5	Total	5,95,584/-

2. The Insurer came up with appeal being MAC APP. No.582/08 challenging the said award and liability having been fastened upon it, the prayer being only to seek recovery rights against the driver (Shankar) and owner (Vijay Kumar Sharma) of the vehicle on the ground that they were not having any valid and effective driving license on the said date. During pendency of the said appeal of the Insurer, the claimant filed cross objections (CM No.11670/09) which were directed to be registered as an independent appeal vide order dated 04.05.2011. Thus, MAC. APP. No.413/2011 of the claimant

seeking enhancement of compensation has also come up for consideration alongside the appeal of the Insurer.

3. On the application of the Insurer, it was granted opportunity to lead additional evidence. Pursuant to the said liberty, it examined Anil Bihari Sahai (AW1), a clerk from office of ARTO, Mathura, UP and Sunil K Nama (AW2) Admin. Officer (Legal) of the Insurer.

4. When these appeals are taken up from the list of *"Regulars",* there is no appearance on behalf of claimants or other respondents. Learned counsel for the Insurer has been heard and with his assistance, the record perused.

5. The claimant had proved to the satisfaction of the tribunal that as a result of the injuries suffered, his right lower limb had to be amputated. This has rendered him permanently disabled as certified (PW1/5) by the Board of Doctors of Safdarjung Hospital of Govt. of India. It has opined permanent disability to be of the extent of 80%. The claimant had contended that his functional disability should have been taken as 100% rather than 80%. This plea cannot be accepted as earlier in similarly placed cases this Court has consistently evaluated functional disability to the extent of 80% as has been rightly concluded by the Tribunal. (*MAC APP 225/2012 "Raj Kumar vs. Reliance General Insurance Co. Ltd. & Ors.*, decided on 10.11.2017).

6. However, there is deficiency in awarding just compensation by award only of Rs.18,584/- towards reimbursement of medical expenditure wrongly shown in the tabulation as compensation for "nature of injuries and pain and sufferings". The tribunal awarded Rs.40,000/- towards pain and suffering and Rs. 10,000/- towards loss

of amenities of life. These awards are grossly inadequate. Following the ruling in the similarly placed case *MAC APP 225/2012 "Raj Kumar vs. Reliance General Insurance Co. Ltd. & Ors.*, the amount of Rs. 40,000/- towards pain and suffering is increased to Rs. 1,50,000/- and the amount of Rs. 10,000/- for loss of amenities of life is increased to Rs.1,00,000/-. In addition, the amount of Rs. 1,50,000/- is added towards disfigurement.

7. The grievance of the claimant that there is no provision made for artificial limb is found to be correct. The amount of Rs.3,00,000/- as claimed by him towards this end is found to be appropriate and thus added in compensation.

8. As a result of the above, compensation would have to be enhanced by a net amount of Rs.7,00,000/- (Rs.1,50,000/- +1,50,000/- + 1,00,000/- + 3,00,000/-). Compensation is, thus, increased to (5,95,584/- + Rs.7,00,000/-) Rs.12,95,584/- round off to Rs.12,96,000/- (Rupees Twelve Lacs and Ninety Six Thousand Only).

9. The award is accordingly modified which shall carry interest as levied by the tribunal.

10. The Insurer by its additional evidence led during pendency of the appeal has proved that the copy of driving license, on which reliance was placed, is not genuine and no such license had been issued in the name of the offending vehicle as affirmed on oath by affidavit of the concerned official of the transport authority to which there is no contest. The insurer has also proved that it had issued a notice under Order XII Rule 8 of CPC, 1908 (Ex AW 2/3) calling upon the driver and owner to produce the driving license. There was

no response to the said notice. The evidence led during pendency of the appeal of the insurer has remained un-impeached and unchallenged as the driver and owner of the offending vehicle would not appear on the material dates. In these facts and circumstances, the insurer has proved that driver was not having a valid or effective driving license. This constitutes breach of terms and conditions of insurance policy and consequently, insurer must succeed.

11. Thus recovery rights are granted to the insurer against the second and third respondent in MAC. APP.582/2008. For enforcement of such recovery rights, the insurer is at liberty to take out appropriate proceedings before the tribunal. However, the insurance company shall continue to be liable to satisfy the enhanced award in favour of the claimant by requisite deposit, including corresponding interest, with the tribunal within thirty days.

12. By order dated 26.11.2008 in MAC APP. 582/2008, the insurer had been directed to deposit the entire awarded amount along with interest in the name of Registrar General of this Court. Pursuant thereto, 75% of the said deposited amount was permitted to be released and balance 25% was released by subsequent order dated 08.11.2010.

13. In facts and circumstances, it is directed that the entire enhanced portion of the award along with accrued interest be released to the claimant in form of fixed deposit interest bearing receipt in the name of a nationalized bank in his favour for a period of seven years with right to draw periodic interest.

14. The statutory amount deposited by the insurer shall be refunded.

15. Both appeals stand disposed of in above terms.

R.K.GAUBA, J.

DECEMBER 05, 2017/*sm*