

\$~R-498

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

Decided on: 16th November, 2017

+ **MAC APPEAL 446/2012**

**RELIANCE GENERAL INSURANCE COMPANY
LTD.**

..... Appellant

Through: Mr. Pankaj Seth, Advocate

versus

MANOJ KUMAR & ORS.

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The first respondent (claimant) had instituted accident claim case (MACP 178/2011) on 21.04.2011 seeking compensation under Sections 166 and 140 of the Motor Vehicles Act, 1988 on the averments that he had sustained injuries and consequently suffered permanent disability on account of the motor vehicular accident that had occurred on 04.12.2010 due to rash driving of a tempo bearing registration no.HR-55C-4145 by the second respondent (driver). The said vehicle was admittedly registered in the name of the third respondent and insured at his instance against third party risk for the period in question with the appellant (insurer). All of them were made parties to the claim case.

2. The Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 01.03.2012, returned a finding that the accident had occurred due to the negligence on the part of the second respondent. It awarded compensation in the total sum of Rs.13,53,491/- fastening the liability on the insurer (appellant) to pay with interest at the rate of 7.5% p.a. calculating the compensation thus :-

Loss of permanent disability upto 90%	Rs.12,53,491/-
Pain and suffering	Rs.50,000/-
Special diet & conveyance	Rs.20,000/-
Loss of amenities	Rs.30,000/-

3. The appeal at hand was filed by the insurer questioning the calculation of compensation on the ground that the assessment of loss of functional disability to the extent of 90% is inappropriate.

4. It is noted that the claimant had suffered grievous injuries in the right limb. The treatment, however, could not repair the damage done and his right leg had to be amputated from the hip joint. His condition was evaluated by a board of doctors of the Din Dayal Upadhyay Hospital of the Govt. of NCT of Delhi, which certified (Ex. PW1/A) that he is a case of post traumatic hip disarticulation of right side with 90% permanent disability in relation to right lower limb. As per the evidence on record, the claimant was earning his livelihood as a driver. The tribunal, in these circumstances, assessed the functional disability to be to the extent of 90%.

5. In the course of hearing, the court pointed out to the learned counsel for the appellant / insurance company that the assessment of functional disability made by the tribunal is seemingly just and proper, it being in accord with the legislative prescription about percentage of loss of earning capacity in such like cases as given by entry no.16 of second part of the first schedule of the Employees' Compensation Act, 1923. It was also pointed out to the counsel for the insurer that there is an error committed by the tribunal in not adding the element of future prospects of increase in income and therefore, the appeal questioning the award granted by the tribunal is neither just nor fair. The counsel was called upon to take further instructions and the matter was passed over. When it is taken up again, the counsel submits his instructions are that the appeal is to be pressed as the insurance company is not ready to accept the assessment of functional disability to the extent of 90%.

6. To say the least, the position taken by the insurance company in the appeal is most unfair and irresponsible, such position not expected of a company which has undertaken the responsibility of covering third party risks for the citizens of this country. The total loss of right limb from hip joint cannot be equated with other cases of partial disability affecting such part of body. This court, in a series of cases wherein amputation below the hip to above knee has been assessing the functional disability to the extent of 80%. For illustration, one may refer to *MACA 530/2010, Reliance General Insurance Co. Ltd. Vs. Mahesh Singh Solal @ Kailash Chand & Ors. decided on 20.09.2017* and *MACA 1068/2016, National Insurance Company Ltd.*

Vs. Priti Gupta and Ors., decided on 24.08.2017. The insurance company is bound to be aware of such view of the court. The case at hand is far more grave where the amputation is from hip joint downward. The submission that the functional disability in this case should be to the extent of 50% only is totally uncalled for. It has to be remembered that while assessing the functional disability, the tribunal, and the court, are expected to bear in mind the nature of job or avocation for which the claimant has been trained or engaged. In the present case, the insurance company seems to be forgetting that the claimant was earning his livelihood as a driver. It is inconceivable that with complete loss of one lower limb right from hip joint downward, he would ever be able to earn his livelihood from such avocation.

7. For the foregoing reasons, the contention of the insurance company against the assessment of functional disability is rejected.

8. This court is under a bounden duty to ensure that just compensation is awarded in all accident claim cases. The error in non inclusion of the future prospects of increase needs to be rectified. Following the ruling of the 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.*, such element will have to be added to the extent of 40%.

9. Thus, the loss of future income due to functional disability is re-assessed as [Rs.6,448/- x 140/100 x 90/100 x 12 x 18] Rs.17,54,887.68/-, rounded off to Rs.17,55,000/- (Rupees Seventeen lakh and fifty five thousand only).

10. Having regard to the dispensation that is generally granted in similarly placed cases, awards of Rs.50,000/- towards pain and suffering and Rs.30,000/- for loss of amenities of life are found to be grossly inadequate, the same are increased to Rs.1,50,000/- each. In addition, Rs.1,50,000/- is added towards dis-figurement.

11. Putting together these heads of compensation, and award of Rs.20,000/- granted by the tribunal towards special diet and conveyance, the total compensation comes to [Rs.17,55,000/- + Rs.1,50,000/- + Rs.1,50,000/- +Rs.1,50,000/- + Rs.20,000/-] Rs.22,25,000/- (Rupees Twenty two lakh and twenty five thousand only). Instead of being reduced, the award is thus increased accordingly.

12. Following the consistent view taken by this Court, the rate of interest is increased to 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.*].

13. Since the insurance company in this case took a totally unreasonable stand, cost of Rs.50,000/- is imposed against it and in favour of the claimant.

14. The insurance company had been directed by order dated 27.04.2012 to deposit the entire awarded amount with up-to-date interest with UCO Bank, Delhi High Court Branch and by order dated 02.11.2012, sixty percent (60%) of such amount was released to the claimant. The insurance company is directed to satisfy the enhanced award and costs by requisite deposit with the tribunal within 30 days. The entire enhanced portion of the award with corresponding effect of

the increase in the rate of interest shall be released to the claimant in the form of fixed deposit receipt taken out from a nationalized bank for a period of ten years with right to draw periodic interest.

15. The statutory deposit shall stand forfeited and shall be made over as additional costs to Delhi High Court Legal Services Committee.

16. The appeal is disposed of in above terms.

NOVEMBER 16, 2017

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R.K.GAUBA, J.