

\$~27 & 28

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

Decided on: 19th July, 2017

+ MAC.APP. 291/2008

THE NEW INDIA ASSURANCE CO.LTD. Appellant
Through: Mr. Pankaj Seth, Adv.

versus

SURAJ PRAKASH & ORS Respondents
Through: Mr. Swastik Singh, Adv. for R-
1.

+ MAC.APP. 845/2013

SURAJ PRAKASH & ORS Appellants
Through: Mr. Swastik Singh, Adv.

Versus

THE NEW INDIA ASSURANCE CO LTD Respondent
Through: Mr. Pankaj Seth, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Suraj Prakash, the first respondent in MAC Appeal No. 291/2008, suffered injuries in a motor vehicular accident that occurred on 31.12.1999 on account of rash driving of Toyota car bearing registration no. DL 2CG 6655, which was statedly insured against third party risk with New India Assurance Co. Ltd. (appellant in MAC Appeal no. 291/2008). He instituted an accident claim case (suit no.

1107/2007) on 20.05.2000 seeking compensation impleading, amongst others, the insurer of the offending vehicle.

2. The tribunal, after inquiry, by judgment dated 18.02.2008 accepted the case of compensation on the principle of fault liability. The tribunal found that the claimant had suffered injuries including fracture of the thigh bone of the left lower limb, proof having been adduced of prolonged treatment involving seven surgical procedures as also of the injuries having rendered, the claimant permanently disabled, the disability having been found, as per the medical opinion, to be to the extent of 41%. The tribunal awarded compensation in the total sum of Rs. 7,22,348/- and directed the same to be paid with interest to the claimants fastening the liability on the insurer.

3. By the appeal at hand, the insurer questions the said award on the ground that there was negligence on the part of the claimant himself and that the calculation of loss of future income on account of disability on the assumed income based on minimum wages with the factor of future prospects of increase was incorrect. *Per contra*, by way of cross-appeal the claimant has submitted that multiplier of 13 applied by the tribunal was wrong inasmuch as his age on the relevant date was 44 years which merited such calculation to be made with the multiplier of 14. The claimant also submitted that his treatment had continued and that he had incurred some further medical expenses which also deserve to be added to the compensation. For this, with the permission taken, he has led additional evidence during the pendency of these appeals by examining Laiazley Roburt (RW1) and Jai Prakash

Narayan Singh (RW2) both officials of St. Stephen's Hospital, besides himself appearing as RW-3.

4. Having heard the learned counsel for the insurer and the counsel for the claimant, this Court is of the opinion that there is no case made out for the finding on the issue of negligence to be disturbed. The evidence of the claimant on oath has virtually gone unimpeached. The sequence of events narrated by him brings out that the accident had occurred due to the negligence of car driver, the latter not entering the witness box with any counter version.

5. The tribunal, it appears, was a little confused as to the age of the claimant. Having noted in the opening para of the impugned judgment his age to be 39 years, in paras 17 and 18, the age was referred as 47 years and 48 years respectively. Copy of the ration card is available at page 1547 of the tribunal's record which indicates his age as on 27.03.1991 to be 36 years. By this reckoning, the age on relevant date would be 44 years and, therefore, the claim for multiplier of 14 to be applied is correct.

6. In the case reported as *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, Supreme Court, *inter-alia*, ruled that the element of future prospects of increase in income will not be granted in cases where the deceased was "self employed" or was working on a "fixed salary". Though this view was affirmed by a bench of three Hon'ble Judges in *Reshma Kumari & Ors. Vs. Madan Mohan & Anr.*, (2013) 9 SCC 65, on account of divergence of views, as arising from the ruling in *Rajesh & Ors. vs. Rajbir & Ors.*, (2013) 9 SCC 54, the issue was later referred to a larger bench, *inter-alia*, by

order dated 02.07.2014 in *National Insurance Company Ltd. vs. Pushpa & Ors.*, (2015) 9 SCC 166.

7. Against the above backdrop, by judgment dated 22.01.2016 passed in MAC Appeal No. 956/2012 (*Sunil Kumar v. Pyar Mohd.*), this Court has found it proper to follow the view taken earlier by a learned single judge in MAC Appeal No. 189/2014 (*HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi & Ors.*) decided on 12.1.2015, presently taking the decision in *Reshma Kumari (Supra)* as the binding precedent, till such time the law on the subject of future prospects for those who are “self-employed” or engaged in gainful employment at a “fixed salary” is clarified by a larger bench of the Supreme Court.

8. There is no formal proof of the engagement of the claimant in regular employment, leave alone any such employment where there would be progressive rise in income. The tribunal, therefore, went by minimum wages of Rs. 2800/-. The element of future prospects of increase which has been added, however, will have to be kept out. Thus, on the disability of 41%, the loss of future income is recomputed as $(2800 \times 41 \div 100 \times 12 \times 14)$ Rs. 1,92,864/-. The award of Rs. 2,27,935/- under this head has to be reduced by $(2,27,935 - 1,92,864)$ Rs. 35,071/-.

9. The additional evidence adduced during the pendency of these appeals has shown additional expenditure towards medical treatment in the sum of Rs. 1,07,116/- which must be added.

10. Therefore, there is a case made out for addition of (1,07,116 - 35,071) Rs. 72,045/-. Needless to add, it shall carry interest as levied by the tribunal. The award is modified accordingly.

11. By order dated 06.05.2008 in MAC Appeal no. 291/2008, the insurance company had been directed to deposit 75% of the awarded amount with interest with the Registrar General and from out of such deposit 50% was allowed to be released. The balance lying in deposit shall also now be released. The insurance company will be obliged to pay the balance in terms of the modified award, as ordered above, with the tribunal by requisite deposit within 30 days of today, making it available to be released to the claimant.

12. Both appeals stand disposed of in above terms.

13. Statutory deposit made by the insurance company shall be refunded.

JULY 19, 2017

nk

R.K.GAUBA, J.