$~R-639 & 639A (common order)

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

Decided on: 5th December, 2017

\+ MAC APPEAL 1144/2012 and CM No.18466/2012

UNITED INDIA INSURANCE COMPANY LIMITED
..... Appellant

Through: Mr. Priyadarsi Acharya, Advocate

versus

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

\+ MAC APPEAL 571/2013

AMIT KUMAR & ORS. ..... Appellants
Through: Mr. O. P. Mannie, Advocate

versus

UNITED INDIA INSURANCE COMPANY LIMITED
..... Respondent
Through: Mr. Priyadarsi Acharya, Advocate

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

JUDGMENT (ORAL)

1. By judgment dated 30.05.2012, the motor accident claim tribunal decided the accident claim case (MACT 744/10/7) which had been instituted on 31.08.2007 seeking compensation under sections

166 and 140 of the Motor Vehicles Act, 1988 for injuries statedly suffered by Amit Kumar, the claimant (respondent no.1 in MAC APP.1144/2002 and appellant in MAC APP.571/2013). By the said judgment, the Tribunal, *inter alia,* held the claimant to have suffered functional disability to the extent of 90%. It granted compensation in total of Rs.24,33,400/- with direction to the insurer to pay the said amount with interest @ 9% per annum, it concededly being the insurer which had issued the insurance policy covering third party risk in respect of motor cycle bearing registration no.DL8 ST 8447, the accident statedly having been caused due to its negligent driving.

2. The insurer came up with MAC APP.1144/2012 against the assessment of functional disability by the tribunal for awarding compensation, besides challenging directions for payment of 'lawyers fee and out of pocket expenses'.

3. *Per contra,* the claimant filed cross-objections (CM No.6981/2013) which was registered as an independent appeal vide order dated 03.05.2013. The appeal (MAC APP.571/2013) seeks enhancement of compensation

4. Having heard learned counsel on both sides, this Court finds that the procedure adopted by the tribunal was wholly vitiated, which defect must result in the impugned judgment being set aside and the claim case being remanded to the tribunal for further appropriate proceedings. The reasons may be set out hereinafter.

5. The claim case was instituted initially on 31.08.2007 for and on behalf of the claimant by his father describing himself to be his natural guardian stating that he (the claimant) was a person of unsound mind. As per averments in the claim petition, the mental incapacity had arisen due to the injuries suffered in the accident. The tribunal proceeded with the matter accordingly and after serving notices and upon completion of pleadings, put the case to inquiry by framing issues on 19.05.2010.

6. The claimant at such stage was present with his counsel Mr. R K Jain. The tribunal noted the background wherein he had been described as a person of unsound mind, not in a position to file the petition or depose in the court or by affidavit. Against this backdrop, the tribunal decided to call for a confirmation from the hospital where treatment had been taken to satisfy itself as to whether the claimant had since become fit, his mental condition being rendered stable. Subsequent proceedings would not show further opinion having been obtained from medical authorities. No call has been taken by the tribunal to the state of mental incapacity (or otherwise) of the claimant to prosecute the case on his own behalf. It is noted that on 19.04.2011, an amended petition came on record it bearing the date 26.08.2010 wherein reference to the mental incapacity or need for prosecution of the case through a next friend (natural guardian/ father) was omitted, giving an impression that he (the claimant) intended to prosecute the case on his own. The corresponding proceedings recorded on 19.04.2011, however, do not account for any such

amended petition being permitted or judicial notice thereof taken. The case thereafter proceeded further in the course of which six witnesses came to be examined for and on behalf of the claimant, he having examined himself (as PW-3) on the strength of his affidavit (PW3/4).

7. Two disability certificates came on record during the course of above noted proceedings, the first (Ex.PW5/A) bearing date 22.09.2008 issued by board of doctors of Hindu Rao Hospital and, the second (Ex.PW-6/1), bearing date 13.10.2011 issued by board of doctors of Dr. Ram Manohar Lohia Hospital, New Delhi. The second certificate indicates that in opinion of the medical board the claimant suffers from mental illness, diagnosis being of "dementia due to brain damage".

8. Crucially, the father or natural guardian have not appeared before the tribunal. This backdrop is of prime concern. There is nothing to show as to how the evidence of PW-3 (claimant) could have been accepted or acted upon if he is a case of dementia for which reason he would not have the mental capacity to prosecute the case on his own. It is quite clear that the tribunal has given a total go-bye to the basic precautions that must be borne in mind while dealing with such cases as at hand. This casual approach cannot be approved of.

9. In the foregoing facts and circumstances, this Court is left with no option but to set aside the impugned judgment and remand the matter back to the tribunal for holding fresh inquiry. Before proceeding further, the tribunal shall have proper evaluation done as to the mental capacity (or otherwise) of the claimant and, if so required

in light of such evaluation, first call upon the natural guardian(s) to act as next friend and in case of any default or negligence on his (or her) part, to proceed to appoint next friend and hold further proceedings in accordance with law.

10. The parties are directed to appear before the tribunal on 7th February, 2018.

11. By order dated 02.11.2012 in MAC APP.1144/2012, the insurance company had been directed to deposit 50% of the awarded amount (excluding the counsel fee and out of pocket expenses) and out of such amount deposited, Rs.2,50,000/- was permitted to be released to the claimant. By subsequent order dated 19.01.2016, another sum of Rs.2.5 lacs was allowed to be released to the claimant. The balance deposited amount having been put in the form of fixed deposit is lying in bank along with accrued interest with statutory deposit which shall presently be refunded to the insurance company. The amount already released to the claimant shall be liable to be adjusted or be subject to suitable directions to be passed by the tribunal at the time of fresh adjudication.

12. Both the appeals are disposed of in above terms.

R.K.GAUBA, J.

DECEMBER 05, 2017
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