$~R-501 & 502

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

Decided on: 16th November, 2017

\+ MAC APPEAL 502/2012

THE NEW INDIA ASSURANCE COMPANY LTD. ..... Appellant

Through: Mr. J.P.N. Shahi, Advocate

versus

SOM PAL SINGH & ORS. ..... Respondents

Through: Mr. D.K. Sharma, Mr. S.K. Vashistha and Mr. Abhinav Sharma, Advocates for R-1

\+ MAC APPEAL 567/2012

SOM PAL SINGH ..... Appellant

Through: Mr. D.K. Sharma, Mr. S.K. Vashistha and Mr. Abhinav Sharma, Advocates

versus

RAJEEV KUMAR AGGARWAL & ORS. ..... Respondents

Through: Mr. J.P.N. Shahi, Adv. for R-2

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

JUDGMENT (ORAL)

1. Sompal Singh (appellant in MACA 567/2012 and first respondent in MACA 502/2012) had instituted accident claim case

(suit no.1080/2008) on 16.12.2008. The Motor Accident Claims Tribunal (Tribunal), after inquiry, held that he (claimant) had suffered injuries and had been rendered permanently disabled in the consequence, on account of the motor vehicular accident that had occurred on 11.09.2008 due to negligent driving of a motor vehicle described as a truck bearing registration no.HR-51GA-1172, which had concededly been insured against third party risk for the period in question with New India Assurance Company Ltd. (appellant in MACA 502/2012 and the second respondent in MACA 567/2012). It awarded compensation in the total sum of Rs.5,42,000/- calculating it thus :-

Cost on treatment	Rs.80,000/-
Pain and sufferings	Rs.10,000/-
Conveyance & Special diet	Rs.20,000/-
Payment for Attendant	Rs.10,000/-
Loss of Income	Rs.12,000/-
Future loss of Income	Rs.3,60,000/-
Loss of amenities	Rs.50,000/-
Total	Rs.5,42,000/-

2. The liability to pay the compensation was fastened against the said insurance company (insurer) with interest at the rate of 7.5% p.a. Both the claimant and the insurer are in appeal, the latter pressing its appeal questioning the award and insisting that it should have been exonerated since it had proved that the driver of the offending vehicle

was not holding a valid or effective driving licence at the relevant time and the former praying for enhancement of compensation.

3. Both appeals were put in the list of 'Regulars', to come up on their own turn as per order dated 02.03.2016. When they are taken up in their own turn, there is no appearance on behalf of the other respondents i.e. the driver or owner of the offending vehicle.

4. The claimant, it is noted, had proved that as a result of the accident he had suffered grievous injuries that included fractures in the left bone, the said bone having been crushed and totally damaged. The surgical procedure that was undergone required removal of the shattered bone and implant of steel rod in its place. The damage also related to the lower hip bone. The claimant has been found, upon medical examination by a board of doctors of Guru Tegh Bahadur Hospital, to be permanently disabled, the locomotor impairment having been assessed to be 75% in relation to the left lower limb (page 217 of the tribunal's record). The tribunal assessed the functional disability to the extent of 50% which, in the considered view of this court, is appropriate evaluation.

5. It was found that the claimant was 40 years' old at the time of the accident and that his income was Rs.4,000/-. p.m. from his temporary employment with Delhi Transport Corporation. The loss of future income has been calculated on such basis at Rs.3,60,000/-. It is, however, noted that the earnings assumed by the tribunal would be lower than the minimum wages (Rs.4107/-) that were payable at the relevant point of time. It is also noted that in this calculation, the element of future prospects of increase in income has not been

considered. Given the nature of employment and the age at which the accident occurred, the element of future prospects of increase to the extent of 40% should have been added. [see judgment 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.*).

6. The loss of income in future due to functional disability is thus re-computed as [Rs.4,107/- x 140/100 / 2 x 12 x 15] Rs.5,17,482/-, rounded off to Rs.5,18,000/- (Rupees Five lakh and eighteen thousand only).

7. It is also the grievance of the claimants that the treatment had continued for almost two years whereas the tribunal has awarded compensation for corresponding loss of income only for three months. It is noted that the record of treatment does show several periods of hospitalization for repeat surgical procedures, the last of which relates to July 2010. Given the nature of injuries suffered, the plea to above effect must be accepted. Thus, the loss of income for the period of treatment is re-calculated as [Rs.4,107 x 24] Rs.98,568/-, rounded off to Rs.1,00,000/- (Rupees One lakh only).

8. Given the nature of the permanent disability sustained and the prolonged period of treatment undergone, the awards under the heads of pain and suffering and loss of amenities of life are found to be grossly inadequate. They are increased to Rs.1,00,000/- each. In addition, Rs.50,000/- is awarded towards loss of dis-figurement.

9. Putting together, all the above mentioned heads, as also the other heads of damages awarded by the tribunal, the total

compensation in the case comes to [Rs.5,18,000/- + Rs.1,00,000/- + Rs.1,00,000/- + Rs.1,00,000/- + Rs.50,000/- + Rs.80,000/- + Rs.20,000/- + Rs.10,000] Rs.9,78,000/- (Rupees Nine lakh and seventy eight thousand only). The award is modified accordingly.

10. 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*.]

11. By order dated 08.05.2012 in MACA 502/2012, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with UCO Bank, Delhi High Court Branch which was ordered to be kept in fixed deposit receipt initially for a period of six months. By order dated 07.12.2012, fifty percent (50%) of such awarded amount was permitted to be released. Since the compensation has been increased, the balance lying in deposit with accrued interest shall be released to the claimant in terms of the judgment of the tribunal. The insurance company shall be liable to satisfy the enhanced award by requisite deposit with the tribunal within 30 days, it to be released in the form of fixed deposit interest bearing receipt taken out from a nationalized bank for a period of seven years with right to draw periodic interest. It is noted that while entertaining the appeal of the insurance company by order dated 08.05.2012, notice was issued only to the claimant, the plea for exoneration having been repelled. In these circumstances, the said plea cannot be entertained at this stage. The interest of the insurance

company is duly protected by the recovery rights which have already been granted.

12. The statutory deposit shall be refunded to the insurance company after it furnishes proof of satisfaction of the enhanced award.

13. Both appeals are disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 16, 2017
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