$~R-509

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

Decided on: 20th November, 2017

\+ MAC APPEAL 566/2012

SATISH KUMAR ..... Appellant
Through: Mr. Navneet Goyal, Advocate

versus

SUNIL KUMAR & ORS. ..... Respondents
Through: Mr. Pankaj Seth, Adv. for R-3

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

JUDGMENT (ORAL)

1. The appellant, aged 24 years old, a graduate in the Business Administration, earning his livelihood as a Computer Operator at the relevant time, on 30.01.2010, suffered injuries in a motor vehicular accident that was caused due to the negligent driving of Jeep bearing Registration no.RJ-14-6C-0503 by the first respondent (driver). The vehicle has admittedly insured against third party risk with the third respondent (insurer) for the period in question.

2. The Motor Accident Claims Tribunal (Tribunal), by judgment dated 23.02.2012, decided his accident claim case (MACT 178/11/2010) instituted on 26.05.2010 and awarded compensation in the total sum of Rs.3,12,600/- fastening the liability on the insurer to pay with interest at the rate of 7.5% p.a. It may be mentioned here

that the said amount of compensation includes loss of income due to functional disability which was assessed at 5% .

3. The appeal at hand is pressed by the claimant to seek enhanced compensation on account of loss of future income due to disability, the submission being that the conclusion on the extent of functional disability by the tribunal was erroneous and unjust.

4. It is noted that the injuries suffered by the claimant included displaced fracture of left shaft femur (upper 3rd) and displaced fracture of right tibia fibula (middle one-third). He was evaluated by a board of doctors of Dr. Ram Manohar Lohia Hospital and disability certificate (Ex. PW1/104) was issued. According to the said assessment, the total locomotor disability was found to be 70%. But then, the claimant being a paralytic from the time prior to the date of the accident, the disability due to trauma suffered as a result of the injuries sustained in the accident was assessed at 30% only. The tribunal has taken this as a functional disability of 50% which, this court accepts the argument of the claimant, was not proper evaluation.

5. Given the nature of the job in which the claimant had been engaged, the functional disability should have been the same as the medical disability i.e. of 30%.

6. Thus, the loss of future income due to disability is re-assessed, after adding the element of future prospects of increase in income 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.* to the extent of 40%, at

[Rs.6,000 x 140/100 x 30/100 x 12 x 18] Rs.5,44,320/- (Rupees Five lakh forty four thousand and three hundred twenty only).

7. Since the tribunal awarded Rs.64,800/- under this head, the award would thus need to be increased by [Rs.5,44,320/ (-) Rs.64,800/-] Rs.4,79,520/- (Rupees Four lakh seventy nine thousand and five hundred twenty only). Therefore, the total compensation is re-computed as [Rs.4,79,520/- + Rs.3,12,600/-] Rs.7,92,120/-, rounded off to Rs.7,93,000/- (Rupees Seven lakh and ninety three thousand only).

8. The award is modified accordingly.

9. 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*.]

10. The insurer is directed to satisfy the enhanced award by requisite deposit with the tribunal within 30 days. The amount thus deposited shall be released to the claimant in the form of an interest bearing fixed deposit receipt taken out from a nationalized bank for a period of 10 years with right to draw periodic interest.

11. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 20, 2017

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