$~R-555 & 556

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 23rd November, 2017

\+ **MAC.APP.794/2012**

ORIENTAL INSURANCE CO LTD ..... Appellant

Through: Mr. Pradeep Gaur, Advocate.

versus

RAHUL GUPTA @ MANOJ KUMAR & ORS ….Respondents

Through: Mr. O. P. Mannie, Advocate for R-1.

\+ **MAC.APP.542/2013**

RAHUL GUPTA @ MANOJ KUMAR & ORS ..... Appellant

Through: Mr. O. P. Mannie, Advocate.

versus

ORIENTAL INSURANCE CO LTD ….Respondents

Through: Mr. Pradeep Gaur, Advocate.

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

JUDGMENT (ORAL)

1. The claimant (appellant in MAC.appeal No.542/2013) had suffered injuries in a motor vehicular accident that occurred on 29.10.2005 involving negligent driving of a half body truck bearing registration no. HR-38/D-6016, admittedly insured against third party

risk for the period in question with the Oriental Insurance Company Limited (the insurer). On his accident claim case (MACT No. 309/10/06) instituted on 03.01.2006, the Tribunal held inquiry and, by judgment dated 02.05.2012, awarded compensation in the total sum of Rs.2,75,766/- calculating it thus:-

A) Pecuniary damages (Special damages)

a) Medical bills ……………………………….……Rs.10,000/-
b) Future Medical Expenses……………………Rs.5,000/-
c) Special diet……………………………… Rs.10,000/-
d) Conveyance charges………………………Rs.5,000/-
e) Loss of Income……………….……… Rs.18,995/-
f) Loss of future income……………………..Rs.1,36,771/-

B) Non-peciniary damages (General damages):

g) Loss of amenities and expectation of life……Rs.20,000/-
h) Pain, sufferings & frustration etc……………Rs.70,000/-

Total: Rs.2,75,766/-

2. The liability to pay the said amount was fastened on the insurer, counsel fee in the sum of Rs.30,000/- having been added thereto.

3. The only ground pressed by the insurance company in its appeal concerns the inclusion of counsel fee, submitting that it was uncalled for. *Per contra*, the claimant argues that in calculating the loss of future income due to disability assessed at 20%, the element of future prospects was wrongly kept out. Such contention needs to be accepted.

4. Following the ruling of a Constitution Bench of the Supreme Court in *SLP (C) 25590/2014, National Insurance Company Ltd. Vs. Pranay Sethi and Ors.,* the element of future prospects of increase to the extent of 40% deserves to be added. Thus, the loss of future

income due to disability is re-computed as Rs.(3166 X 140/100 X 20/100 X 12 X 18) Rs. 1,91,479.68 rounded off to Rs.1,91,480/-. This would mean the award needs to be increased by (1,91,480/- - 1,36,771/-) Rs.54,709/-. The award is increased to (2,75,766/- + 54,709/-) Rs.3,30,475/- rounded off to Rs.3,31,000/- (Rupees Three Lakhs and Thirty One Thousand only). Needless to add, the increased award will also carry interest as levied by the Tribunal.

5. There being no justification for such inclusion, the direction for payment of counsel fee is set aside. The award is modified accordingly.

6. By order dated 27.07.2012 (in MAC. Appeal No. 794/2012), the insurance company had been directed to deposit the entire awarded amount with UCO Bank, Delhi High Court Branch and 60% of such deposit was allowed to be released to the claimant. Since the award has been increased, the registry shall release the balance lying in deposit to the claimant. The insurer shall satisfy the balance award by requisite deposit with the Tribunal within 30 days.

7. The statutory amount shall be refunded upon proof of award having been satisfied is furnished.

8. The appeals stand disposed of accordingly.

R.K.GAUBA, J.

NOVEMBER 23, 2017
srb