

\$~ 25 & 26 (common order)

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

Decided on: 7th July, 2017

+ MAC.APP. 470/2014

SHRI SANJAY RAINA

..... Appellant

Through: Mr. Ajay Kumar, Advocate

versus

SHRI RAM NAYAN & ORS

..... Respondents

Through: Ms. Suman Bagga, Advocate
with Mr. Pankaj Gupta,
Advocate for R-3.

+ MAC.APP. 499/2014

ROYAL SUNDARAM ALLIANCE INSURANCE CO LTD

..... Appellant

Through: Ms. Suman Bagga, Advocate
with Mr. Pankaj Gupta,
Advocate for R-3.

versus

SANJAY RAINA & ORS

..... Respondents

Through: Mr. Ajay Kumar, Advocate for
R-1.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Sanjay Raina (appellant in MAC APP.470/2014 and first respondent in connected MAC APP.499/2014), 42 years old at the relevant point of time working as Manager (Accounts & Taxation)

with M/s. Homex India Pvt. Ltd., Jasola Vihar, New Delhi was moving on his motorcycle on 31.05.2012 when he was involved in a collision with Honda Accord Car bearing registration No.HR-51-AC-6869 (the offending vehicle) resulting in he suffering injuries. The accident statedly took place because of the negligent driving of the said offending vehicle by Ram Nayan, respondent in these appeals, it being registered in the name of M/s. Sterling Tools Ltd., another respondent in these appeals, it concededly being insured against third party risk for the period in question with M/s. Royal Sundaram General Insurance Company Limited (appellant in MAC 499/2014 and respondent in the connected appeal MAC APP.470/2014). He filed the accident claim case (suit No.16/2013) impleading the said driver, owner and insurer of the vehicle as respondents.

2. After inquiry, the Motor Accident Claims Tribunal (the tribunal), by judgment dated 31.01.2014, upheld the contentions that the accident had occurred due to negligent driving of the offending vehicle. The compensation in the sum of Rs.6,58,000/- was awarded with interest and liability has been fastened on the insurer.

3. The claimant by his appeal (MAC APP.470/2014) submits that the compensation on account of permanent disability it having a bearing on the loss of future earnings is inadequate. The insurer, on the other hand, by its appeal (MAC APP.499/2014) questions the award of Rs.2 lacs under that head on the ground the evidence would not justify the same.

4. Thus, the conclusions reached by the Tribunal as to the negligence on the part of the driver of the offending vehicle and a valid cause of action for compensation, as also the liability of the insurer to indemnify are not questioned.

5. Though the compensation in the sum of Rs.6,58,000/- has been awarded, it having been computed under various heads, questions have been raised only with regard to award of Rs.2 lacs against the head of compensation for permanent disability, loss of income and loss of future earnings.

6. It is clear from the evidence led, as also noted by the Tribunal, the services of the claimant were terminated by his employer by a communication issued on 22.11.2012, *i.e.*, within six months of the incident. The claimant had alleged that it was a case of wrongful termination since he had been rendering services to the employer to the best of his ability and satisfaction. It appears he filed a civil suit (Suit No.543/2013) against his employer for recovery of Rs.9,21,000/- on such pleadings. Detailed reference to the averments in the plaint of the suit have been made in the impugned award. At the hearing, the counsel for the insurer also sought reference to the written statement submitted by the employer indicating that it was not satisfied with the services rendered.

7. The issue to be decided by this court is not whether the claimant had been rendering good services to his employer or even whether the termination of his services in November, 2012 was wrongful or otherwise. The fact remains that the employer did terminate his

services by communication dated 22.11.2012. In absence of any proof to that effect, the loss of earnings, if any, consequent upon injuries and permanent disability suffered will thus have to be computed with reference to the date of such termination of services. Unfortunately, the Tribunal has not undertaken any such exercise. It has chosen to award lump sum amount of Rs.2 lacs without any basis. Such a grant, picking up a figure from thin air, is not a correct approach.

8. The evidence clearly showed that the claimant had suffered fracture in the pelvic region besides multiple other injuries on several parts of the body. As a result of the said hip injury, he has been rendered permanently disabled. The disability certificate (Ex.PW1/11) issued by the board of doctors of Pandit Madan Mohan Malviya Hospital of the Govt. of NCT of Delhi, which was proved without any contest, shows that his disability in relation to the right lower limb has been certified to the extent of 60%, such condition being non-progressive and not likely to improve.

9. Unfortunately, the disability certificate does not spell out the reasons for the assessment or its extent as indicated. The claimant in his evidence also did not elaborate as to what effect he has suffered on his life or body. Given the nature of job for which he has been trained, and the nature of injuries indicated by the MLC, it can, however, be safely said that the functional disability suffered by him would be 20% in relation to the whole body. It is this element which has to be compensated.

10. When the appellant/claimant suffered injuries, he was 42 years old. This is affirmed by the medical record and his own testimony. The termination from services came within six months. In these circumstances, the loss of future earning on account of disability will have to be worked out with the multiplier of 14.

11. The claimant had proved his salary and emoluments by document Ex.PW-1/6. It indicated the gross salary to be Rs.9 lacs per annum. But then, this would include certain benefits in the nature of medical reimbursement, leave travel, which will have to be discounted. Similarly, the uniform allowance of Rs.42,000/- per annum and conveyance allowance of Rs.84,000/- will also have to be kept out from consideration. The net salary on which the loss of future earning deserves to be computed thus comes to (8,40,000/- - 42,000/- - 84,000/-) Rs.7,14,000/-.

12. The annual loss of future earnings on account of 20% disability would stand computed at $(7,14,000/- \times 20 \div 100)$ Rs.1,42,800/-. On the multiplier of 14, the loss of future earnings deserves to be compensated in the sum of $(Rs.1,42,800/- \times 14)$ Rs.19,99,200/- rounded off to Rs.20 lacs.

13. Since the award granted by the Tribunal was in the meager sum of Rs.2 lacs under this head, the total award is enhanced by Rs.18,00,000/-. Needless to add, it shall also carry interest as levied by the Tribunal.

14. Ordered accordingly.

15. By order dated 26.05.2014 on the file of MAC APP.499/2014, insurance company had been directed to deposit the entire awarded amount with the Registrar General of this court within the period specified. Out of such deposit, sixty percent (60%) was allowed to be released to the claimant, the balance kept in fixed deposit receipt. The balance lying in the fixed deposit shall now be released to the claimant.

16. The insurance company will be obliged to deposit the enhanced portion of the award with corresponding interest with the Tribunal within thirty days of today. Upon such deposit being made, the said amount in entirety shall be put in fixed deposit receipt in a nationalized bank in the name of the appellant/claimant for a period of ten (10) years with entitlement to draw quarterly interest.

17. Both the appeals stand disposed of in above terms.

18. The statutory amount, if deposited, shall also be refunded to the insurance company.

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R.K.GAUBA, J.

JULY 07, 2017

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