$~R-552 & 553

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 23rd November, 2017

\+ **MAC.APP.791/2012**

ORIENTAL INSURANCE CO LTD ..... Appellant
Through: Mr. Pradeep Gaur, Advocate.

versus

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

\+ **MAC.APP.590/2013**

ANIMESH MALIK ..... 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.590/2013) had suffered injuries in a motor vehicular accident that occurred on 29.10.2005 involving negligent driving of 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. 310/10/06) instituted on 03.01.2006, the Tribunal held inquiry, and by judgment dated 02.05.2012, awarded compensation in the total sum of Rs.2,65,000/- calculating it thus:-

A) Pecuniary damages (Special damages)

a) Medical bills ……………………………….…….Rs.75,000/-
b) Future Medical Expenses……………………Rs.30,000/-
c) Special diet………………………………… Rs.20,000/-
d) Conveyance charges………………………Rs.15,000/-
e) Loss of Income…………………..………. Rs.25,000/-

B) Non-peciniary damages (General damages):

f) Pain, sufferings & frustration etc…………….Rs.1,00,000/-

Total: Rs.2,65,000/-

2. The liability to pay the said amount was fastened on the insurer, counsel fee in the sum of Rs. 20,000/- having been added thereto.

3. The insurer, by its appeal, questions the award submitting that the compensation under the head of pain, suffering and frustration awarded at Rs.1 lakh is excessive and addition of counsel fee was uncalled for.

4. *Per contra,* the claimant by his appeal has pointed out that the medical expenditure was proved in the total sum of Rs.1,50,000/- and PW-3, the Director of the medical facility, had proved that though only Rs.75,000/- had been paid, the remaining bill was outstanding, apparently because the claimant was unable to bear such expenses. The record would show that the claimant had suffered blunt abdominal trauma with septicemia with fracture of third metatarsal bone (left)

and injury to right hepatic lobe with hepatitis (Ex.PW4/1). Having regard to the nature of the injuries and the prolonged treatment undergone, the non-pecuniary damages as awarded by the Tribunal cannot be said to be excessive.

5. Keeping in view the evidence of PW-3, indeed Rs. 75,000/- deserves to be added for medical expenditure. Ordered accordingly. The award, thus, stands increased by the said amount. The increased portion also to carry interest as levied by the Tribunal.

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

7. By order dated 27.07.2012 (in MAC. Appeal No. 791/2012), the insurance company had been directed to deposit the entire awarded amount, 50% of such deposit being 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 enhanced amount by requisite deposit with the Tribunal within 30 days.

8. The statutory amount shall be refunded upon proof of satisfaction of the award being furnished.

9. The appeals stand disposed of accordingly.

R.K.GAUBA, J.

NOVEMBER 23, 2017
srb