

\$~R-530

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 21st November, 2017

+ **MAC.APP.714/2012**

SANTOSH PATRO

..... Appellant

Through: None.

versus

NATIONAL INSURANCE CO LTD & ORS Respondents

Through: Mr. Pankaj Seth, Advocate.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant had suffered injuries in motor vehicular accident that occurred on 27.09.2008 due to negligent driving of truck trala bearing No.HR-38G-5967, admittedly insured against third party risk with the first respondent (the insurer). On his accident claim case (MACT suit No. 11/09) instituted on 06.01.2009, the Tribunal concluded that he had suffered permanent functional disability which was assessed to the extent of 10% and, on that basis, awarded compensation in the total sum of Rs.2,18,000/-. The liability to pay was fastened on the insurer with interest at 7.5 %.

2. By the appeal at hand the claimant sought enhancement of the compensation. During its pendency, with the permission taken from the Court, the claimant examined Dr. Sandeep Singh as additional witness on 21.04.2014 who proved disability certificate Ex.PW1/J. The appeal was put in the list of “*Regulars*” as per order dated

20.09.2016. When it is called out for hearing on its turn, there is no appearance for the appellant. Learned counsel for the insurance company has been heard and the record perused.

3. The Tribunal was not satisfied with the proof of income. It assumed Rs.3,683/- as the notional income on the basis of minimum wages of an unskilled workman prevalent during the relevant period. It also noted that the injuries sustained by the claimant included degloving injury over anterior abdominal wall in the lower and upper part of right medial thigh including genitalia and penile skin with intraperitoneal urinary bladder rupture with avulsion of right ASIS.

4. The disability certificate Ex.PW1/J, however, was valid only for two years, the condition of the claimant requiring re-evaluation. There has been no effort made by the claimant to undergo further medical examination. In these circumstances, there is no occasion for the conclusion reached by the Tribunal about the extent of functional disability to be interfered with by this Court.

5. The Tribunal has, however, omitted to take into account the element of future prospects of increase while calculating the loss of future income. Therefore, suitable correction needs to be made. The loss of future income due to functional disability is, thus, re-assessed, after adding the element of 40% of future prospects of increase following the ruling of 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.*, at Rs.(3,683/- X 140 ÷ 100 ÷ 10 X 12 X 17) Rs.1,05,186/-. Since the Tribunal had calculated the amount of Rs.75,133/- under the head of loss of future earnings on

account of disability, the award needs to be increased by (1,05,186 – 75,133) Rs.30,053/-.

6. The claimant did not prove any medical expenditure and therefore, the Tribunal did not make any award under this head. It is, however, to be kept in mind that even if the claimant had availed of free medical aid from government facilities, there would always be some sundry expenditure that is not taken care of. In these circumstances, an amount of Rs.30,000/- is added under the said head. The awards under the other heads of damages granted by the Tribunal are found to be just and appropriate.

7. In the consequence, the award is increased by (30,053 + 30,000) Rs. 60,053/-.

8. Thus, the total compensation is increased to (2,18,000/- + 60,053/-) Rs.2,78,053/- rounded off to Rs.2,79,000/- (Rupees Two Lakhs Seventy Nine Thousand Only).

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 amount by requisite deposit with the Tribunal within 30 days.

11. The appeal stands disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 21, 2017//srb