$~R-526

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

Decided on: 22nd November, 2017

\+ MAC APPEAL 707/2012

THE NEW INDIA ASSURANCE COMPANY LTD. ... Appellant

Through: Mr. Priyadarsi Acharya, Advocate

versus

SEEMA SHARMA & ORS. ..... Respondents

Through: Mr. Peeush Sharma and Mr. Shaurya Mitra Tomar, Advocates for R-1

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

JUDGMENT (ORAL)

1. On the accident claim case (MACT case no.370/10/09) instituted on 18.11.2009 by the first respondent (claimant), the Motor Accident Claims Tribunal (Tribunal) by judgment dated 25.04.2012, awarded compensation in the total sum of Rs.13,37,002/- fastening the liability on the appellant / insurer to pay, it admittedly having issued an insurance policy covering third party risk in respect of the offending vehicle described as Tata 407 bearing registration no.HR-56-0069. The award includes Rs.5,90,400/- towards loss of future income, on the basis of conclusion that the claimant has suffered functional disability to the extent of 50%.

2. The appeal by the insurer, *inter alia*, is pressed for reconsideration of the conclusion about the functional disability it being pointed out that the disability certificate (Ex.PW3/A) issued on 10.12.2010 by board of doctors of Dr. Baba Saheb Ambedkar Hospital, Govt. of NCT of Delhi had indicated its validity to be only two years, there being a need for re-evaluation thereafter which was never undertaken. The insurer also submits that since the medico legal certificate indicated influence of alcohol, the tribunal fell into error by rejecting the plea of contributory negligence.

3. *Per contra*, the counsel for the claimant argued that the treatment of the claimant has continued post decision in the claim petition by the tribunal, including for removal of the implants, necessitating further medical expenditure which has not been taken care of by the impugned judgment. He submitted that the conclusion on the issue of presence of alcohol as reached by the tribunal is correct but the matter concerning the computation of compensation deserves further inquiry in the course of which the claimant would not only need to undergo further evaluation to assess the effect of injuries suffered but also to prove further medical expenditure.

4. Having heard the learned counsel on both sides, this court finds no merit in the plea about contributory negligence. The tribunal has considered this issue properly and rejected the contention based on the observation in the MLC about presence of alcohol, in absence of any blood test report indicating the level of such presence.

5. In the given facts and circumstances, the issue of compensation deserves further inquiry and, therefore, the impugned judgment to the

extent the compensation was thereby determined is set aside and the matter remanded to the tribunal for further inquiry. In such further proceedings, the claimant as well as the parties that contest will be given opportunity to lead additional evidence and the claimant also subjected to fresh evaluation by a medical board to be arranged by the tribunal. The tribunal shall, thereafter, adjudicate on the issue afresh not feeling bound by the view taken in the earlier judgment.

6. In terms of order dated 11.07.2012, the insurance company had been directed to deposit 60% of the amount awarded by the impugned judgment with up-to-date interest excluding the counsel fee and out of pocket expenses. The said amount was permitted to be released to the claimant in terms of orders dated 11.07.2012 and 12.08.2013. The amount already received by the claimant will be liable to be adjusted against the amount of compensation to be determined by the tribunal by its fresh judgment or appropriate directions passed in its regard.

7. The statutory amount shall be refunded.

8. The parties are directed to appear before the tribunal on 20.12.2017.

9. The appeal is disposed of in above terms.

Dasti.

R.K.GAUBA, J.

NOVEMBER 22, 2017
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