$~R-101 & 101A *(common order)*

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

Decided on: 4th August, 2017

\+ MAC.APP.463/2009 and CM APPL.13500-13501/2009

NATIONAL INSURANCE COMPANY LIMITED
….. Appellant
Through: Mr. A.K. Soni, Advocate

Versus

SEPOY RAKESH KUMAR & ORS. ..... Respondents
Through: Nemo.

\+ MAC.APP.629/2009

SEPOY RAKESH KUMAR ..... Appellant
Through: Nemo.

Versus

NATIONAL INSURANCE COMPANY LIMITED & ORS.
….. Respondents

Through: Mr. A.K. Soni, Advocate for R-1.

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

JUDGMENT (ORAL)

1. Rakesh Kumar (appellant in MAC APP.629/2009), then 22 years, a Sepoy in Indian Army, serving in Rajputana Rifles at Delhi Cantt. while riding motorcycle on 11.11.2004, met with an accident at

about 9:40 a.m. in the area of Dhaula Kuan, Delhi-Gurgaon road, on account of negligent driving of bus bearing registration No.DL-1PA-6643, it admittedly being insured against the third party risk for the period in question with National Insurance Company Limited (appellant in MAC APP.463/2009) and consequently suffered injuries. The injuries suffered by him rendered him permanently disabled, it eventually leading to he being discharged from Army service, the disability having been certified (Ex.PW-1/D) on 12.12.2006 to be in the nature of stiff elbow with restricted movement of right shoulder, it being to the extent of sixty per cent (60%). He filed accident claim case (Suit No.1037/2004) on 22.12.2004 which, along with another claim by him towards damage to motorcycle, was put to inquiry. The Motor Accident Claims Tribunal (the tribunal), by judgment dated 18.04.2009, upheld the claim for compensation on the principle of fault liability, awarding total compensation in the sum of Rs.9,58,108/- directing the above mentioned insurance company (the appellant) to pay with interest @ 7.5% per annum, the said amount inclusive of Rs.6,48,108/- calculated towards loss of income due to permanent disability.

2. These two appeals, one by the insurer and the other by the claimant, challenge computation of loss of income in future due to permanent disability. The grievance of the insurance company is that the tribunal fell into error by tripling the income earned at the time of the accident to reach the conclusion that the income against which such loss was to be worked out would be in the sum of Rs.10,590/-.

The claimant, on the other hand, by his appeal, has pointed out that the salary proved by him was in the sum of Rs.8238/- which included Rs.1,500/- towards ration money and Rs.6,738/- inclusive of basic pay and other allowances. He pointed out that the tribunal fell into error by taking up only the basic pay (3,530/-) for calculation. It is also submitted in the appeal of the claimant that the calculation with the multiplier of 17 was not proper and further that the assessment of functional disability to the extent of thirty per cent (30%) was unjustified.

3. The submission of the claimant in this appeal about wrong calculation by the tribunal must be accepted. The salary statement (Ex.PW-1/G) confirms the gross emoluments in the sum of Rs.6,738/-, the amount of Rs.3,530/- being only the basic pay. Indeed, as member of Indian Army, he was also entitled to ration money adding which factor the total emoluments come to Rs.8,238/-per month.

4. The tribunal calculated the notional income by a long winded reasoning on the speculation that the income of the claimant would have risen in due course on he being eventually promoted up to the rank of Subedar Major. Such exercise was not necessary. The element of future prospects in terms of decision in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC, 121,* would be the correct method and the claimant is entitled to increase to the extent of 50% in his income. Having regard to the age (23 years) at the relevant point of time, such calculation would have to be made with the multiplier of 18. This court, however, upholds the conclusion of

the tribunal about the assessment of functional disability. Taking into account the nature of injuries suffered, the disability affecting the earning capacity would not be the same as equivalent to the medical disability which was in relation to the particular limb affected.

5. Thus, the compensation on account of loss of income due to functional disability is re-computed as (8238 x 150/100 x 12 x 18 x 30/100) Rs.8,00,733.6 rounded off to Rs.8,01,000/-.

6. Adding the other components awarded by the tribunal, the total compensation comes to (8,01,000/- + 2,00,000/- + 1,00,000/- + 10,000/-) Rs.11,11,000/-.

7. Following the consistent view taken by this Court [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.], the rate of interest is increased to 9% per annum from the date of filing of the petition till realization.

8. The award is modified accordingly.

9. By order dated 06.11.2009, passed in MAC APP.463/2009, the insurance company was directed to deposit the entire awarded amount with UCO Bank, Delhi High Court, New Delhi within the period specified. By subsequent order dated 21.12.2009, some portion of the amount was released into savings bank account of the claimant, the balance being kept in fixed deposit receipts for various periods with right to draw periodic interest and to make withdrawals from the said accounts in terms of the detailed directions. The said fixed deposit

receipts now shall be handed over to the claimant for being availed of in due course.

10. The insurance company is directed to deposit the enhanced portion of the award with interest by requisite deposit with Tribunal within thirty days, making it available to be released to the clamant.

11. The statutory amount shall be refunded to the appellant insurance company.

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

13. The claimant shall be informed by a copy of this judgment of being served on him.

R.K.GAUBA, J.

AUGUST 04, 2017
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