$~R-533

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 22nd November, 2017

\+ **MAC.APP. 721/2012 & CM 11704/2012**

FUTURE GENERALI INDIA INSURANCE CO LTD ... Appellant
Through: Mr. Pankaj Gupta for Ms. Suman Bagga, Advocate

versus

ANKIT HUDA AND ANR ...Respondents
Through: Mr. Navneet Goyal with Ms. Kavita Tyagi, Advocates for R-1.

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

JUDGMENT (ORAL)

1. The first respondent (the claimant) was 18 years old on 09.05.2010 when he suffered injuries in a motor vehicular accident that occurred due to negligent driving of motor vehicle described as Tata Ace bearing registration No. DL-1LM-4745. The injuries suffered by him included multiple fractures of the skull, nasal bone, jaw and other parts of the face, the right eye having been gouged out, the aftermath also affecting the vision in the left eye. On his accident claim case (MACT No. 946/10) instituted on 02.07.2010, the Tribunal held inquiry and by judgment dated 07.06.2012, awarded compensation in the total sum of Rs.56,15,000/- calculating thus:-

Pecuniary damages (Special damages)

a) Medical expenses …………………………Rs.9,00,000/-

b) Future Medical Expenses……………………Rs.3,00,000/-
c) Loss of future income etc. …………………..Rs.32,40,000/-.
d) Special diet………………………………… Rs.40,000/-
e) Conveyance………………………………… Rs.25,000/-
f) Loss of Income for twelve months ………. Rs.3,60,000/-
g) Attendant Charges…………………………Rs.50,000/-

<u>Non-peciniary damages (General damages):</u>

h) Pain and sufferings & trauma…………………Rs.2,00,000/-
i) Loss of amenities & enjoyment of life……… Rs.2,00,000/-
j) Loss of marriage prospect…………………......Rs.3,00,000/-

Total: Rs.56,15,000/-

2. The liability to pay the above mentioned amount with interest @ 9% per annum was fastened against the appellant (the insurer), it admittedly having issued an insurance policy covering third party risk for the period in question in respect of the vehicle.

3. The insurer, by the appeal at hand, has questioned the award primarily arguing that the income assumed at Rs.30,000/- per month was unfounded and that the functional disability assessed at 50% is excessive. Exception is also taken to certain non-pecuniary heads of damages and the levy of counsel fee at Rs.1 lakh.

4. The claimant was an 18 year old boy, still a student. Though he would claim that he was pursuing a degree course from Vivekanand Institute of Technology and Sciences, no clear proof was mustered in this regard. It is, however, clear from the evidence on record that he had completed school education. He had been examined by a board of doctors of Dr. Rajinder Prasad Centre for Ophthalmology of All India Institute of Medical Sciences, which issued disability certificate (Ex.PW2/A) affirming that there has been permanent and total loss of

vision in the right eye, the vision in the left eye also having been affected partially, though corrected with glasses. The claim before the Tribunal was that this condition should be taken as total disability to the extent of 100%. The Tribunal assessed it at 50% functional disability.

5. Having regard to the fact that there has been a total loss of vision in the right eye, it being a condition which cannot be said to be without complications, the vision in the other eye also having been affected, keeping in view the legislative guidance as per Entry Nos. 25, 26, 26A of the second part of first schedule appended to Employees' Compensation Act, 1923, the conclusion reached by the Tribunal about the functional disability being to the extent of 50% does not call for any interference. The same is, therefore, affirmed.

6. It was claimed by the first respondent before the Tribunal that while pursuing his studies, he was also earning by taking tutorial classes to the extent of Rs.5000/- per month. Yet, the Tribunal assumed the income of Rs.30,000/- per month on the assumption that he would have risen to find a decent government job with salary at that level. This reasoning cannot be accepted, particularly given the fact that even the claimant would not claim any such earnings. Notional income has to be assessed and there cannot be a better bench mark than the minimum wages payable to a matriculate which, in the present case, would be Rs.6448/- per month. Following the ruling of the Supreme Court in *SLP (C) 25590/2014, National Insurance Company Ltd. Vs. Pranay Sethi and Ors.,* the element of future prospects of increase to the extent of 40% deserves to be added.

7. Loss of future income on account of functional disability is re-computed as (6448/- X 140/100/2 X 12 X 18) Rs.9,74,937.60 rounded off to Rs.9,75,000/- (Rupees Nine Lakhs and Seventy Five Thousand Only). The Tribunal has included Rs.32,40,000/- under this head and thus, there has to be a reduction in the award by an amount of Rs.(32,40,000-9,75,000/-) Rs.22,65,000/-.

8. Given the above noted condition of the claimant, the awards under the non-pecuniary heads of damages are not found to be excessive. The plea against the said awards is, thus, rejected.

9. The total compensation, therefore, is reduced to Rs. (56,15,000 – 22,65,000) Rs.33,50,000/- (Rupees Thirty Three Lakhs and Fifty Thousand Only). The award is modified accordingly. Needless to say, it shall carry interest as levied by the Tribunal at the rate of 9% (nine per cent) per annum.

10. There being no justification for inclusion of Rs.1 lakh as counsel fee in the award, directions to such effect are set aside.

11. By order dated 13.07.2012, the insurance company had been directed to deposit 50% of the awarded amount in the name of the claimant with UCO Bank, Delhi High Court Branch, and on such deposit Rs.9 lakhs was permitted to be released.

12. The amount of counsel fee appears to have already been released to the claimant, though he was directed to refund the same. It seems there has been no compliance. If this is the position, the registry shall deduct and refund the same out of the balance lying in deposit. After such deduction and refund to the insurer, the registry shall calculate the balance of the amount payable to the claimant and

release the same in terms of the modification ordered above. If there is any deficiency in the deposit, by the insurance company, it shall be liable to make it good by requisite deposit with the Tribunal within 30 days.

13. The statutory amount shall be refunded upon proof of award having been satisfied is furnished by the insurance company.

14. The appeal and the pending application are disposed of in the above terms.

R.K.GAUBA, J.

NOVEMBER 22, 2017
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