

\$~R-547

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

*Decided on: 23<sup>rd</sup> November, 2017*

+ **MAC APPEAL 759/2012**

**SHRIRAM GENERAL INSURANCE CO. LTD. .... Appellant**

Through: Mr. Priyadarsi Acharya,  
Advocate.

versus

**NARESH & ORS.**

... Respondents

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**JUDGMENT (ORAL)**

1. The first respondent (the claimant), then aged 36 years, earning his livelihood as a worker in a factory, suffered injuries in a motor vehicular accident that occurred on 23.03.2011 due to negligent driving of Truck bearing registration no.HR-69-4919, which was duly insured against third party risk with the appellant (the insurer) for the period in question. On his accident claim case (MACT case No. 128/2011), the Tribunal, by judgment dated 17.05.2012, returned a finding that the accident had occurred due to negligent driving of the truck by the second respondent holding him and the third respondent (owner) jointly and severally liable to pay compensation. The

Tribunal computed the compensation by the said judgment in the total sum of Rs.19,00,129/- calculating thus:-

**A) Pecuniary damages (Special damages)**

|                                 |                |
|---------------------------------|----------------|
| a) Medical bills .....          | Rs.34,213/-    |
| b) Future Medical Expenses..... | Rs.30,000/-    |
| c) Special diet.....            | Rs.25,000/-    |
| d) Conveyance charges.....      | Rs.10,000/-    |
| e) Attendant charges.....       | Rs.36,000/-    |
| f) Loss of Income.....          | Rs.36,504/-    |
| g) Loss of future income.....   | Rs.14,78,412/- |

**B) Non-pecuniary damages (General damages):**

|                                                                       |               |
|-----------------------------------------------------------------------|---------------|
| a) Pain, suffering, inconvenience, shock<br>and frustration etc ..... | Rs.70,000/-   |
| h) Loss of amenities and shortening of life.....                      | Rs.1,50,000/- |

Total: Rs.19,00,129/-

2. Upon error being pointed out by an application, the Tribunal revised the said award by subsequent order dated 03.07.2012 and added Rs.1,09,512/- to the total compensation, such amount being towards loss of income. The insurer was called upon to pay the above said amount of compensation with interest at 9% per annum.

3. By the appeal at hand, the insurer presses reconsideration of the award submitting that it is excessive, arguing that the functional disability assumed to the extent of 90% was uncalled for. It is also the argument of the insurer that the loss of income has been added twice

to the compensation. It is further the submission that the non-pecuniary damages are on the higher side.

4. It is noted that on account of the injuries suffered, the claimant underwent prolonged medical procedure including surgeries which led to amputation of his right lower limb below knee. He was examined by a board of doctors of Dr. Baba Saheb Ambedkar hospital which issued disability certificate (Ex.PW3/A) according to which the disability is permanent and assessed as 60% physical impairment. The Tribunal, however, took it as functional disability to the extent of 90%. This assumption of functional disability is apparently inappropriate. In similarly placed case which was subject matter of *MAC. Appeal No. 563/2009, Oriental Insurance Co. Ltd. v. Smt. Sushila & Ors., decided on 23.08.2017*, this Court had taken the functional disability to the extent of 60%. Following the said ruling, the loss of future income due to disability needs to be reconsidered.

5. There is one more error committed in the calculation by the Tribunal which needs small correction. Future prospects of increase in income to the extent of 50% has been added. Following the ruling of a 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.*, this would have to be restricted to 40%.

6. Thus, loss of future income due to disability is re-calculated as Rs.  $(6084 \times 140/100 \times 60/100 \times 12 \times 15)$  Rs.9,19,900.80 rounded off to Rs.9,20,000/-.

7. Indeed there is an overlapping in the calculation in the judgment dated 17.05.2012 and the order dated 03.07.2012. The Tribunal had

initially granted loss of income during the period of treatment for six months. But then, on error being pointed out, the award under the said head was revised so as to calculate it for the period of 12 months against the income notionally assumed with the element of future prospects which was inappropriate. The loss of income for the period of 12 months would come to Rs.(6084 X 12) Rs.73,008/- rounded off to Rs.74,000/-. Thus, this amount will have to be added to the compensation instead of the two amounts mentioned under the head of loss of income in the impugned judgment and the order.

8. Having regard to the facts and circumstances of the case, the non-pecuniary damages awarded by the Tribunal do not seem to be excessive and so do not call for any interference, rather there is a deficiency to the effect that there is no provision made for the artificial limb, evidence in which regard have been duly adduced by the claimant before the Tribunal through Kapil (PW-2) and Ashutosh Burman (PW-4), officials from a company, engaged in the business of providing prosthetic limbs, Endolite India Limited. According to the said evidence, the cost of arrangement of artificial limb at that point of time was Rs.87,700/-. PW-4 clarified that the life of such artificial limb would generally be two years, whereafter it would require either a change or replacement of its components. In the given facts and circumstances, some arrangement will have to be put in position so that a corpus is created for it to be tapped by the claimant as and when he requires the artificial limb to be changed. Taking into account the quotation of the expenditure for one such artificial limb, as in 2012, and adding the overhead charges, that would be required, as also the

possibility of its replacement, assumed to be minimum three during the life time of the claimant, an amount of Rs.4,00,000/- deserves to be added in the compensation under this head.

9. It is also noted that there is no award made towards disfigurement. An amount of Rs.1,00,000/- under the said head is added.

10. Putting together all the other heads of damages awarded by the Tribunal, the total compensation in the case comes to (34,213 + 30,000 + 25,000 + 10,000 + 36,000 + 74,000 + 9,20,000 + 1,00,000 + 1,50,000 + 4,00,000 + 1,00,000) Rs.18,79,213/- rounded off to Rs.18,80,000/- (Rupees Eighteen Lakhs and Eighty Thousand Only). The award is modified accordingly. Needless to add, it shall carry interest as levied by the Tribunal.

11. By order dated 20.07.2012, the insurance company had been directed to deposit 75% of the awarded amount with up-to-date interest with UCO Bank, Delhi High Court branch and out of such deposit, Rs.3,00,000/- were permitted to be released to the claimant. By order dated 23.09.2013, the insurance company was directed to deposit the balance 25% of the awarded amount with up to date interest and upon such deposit, the amount so deposited was to be released to the claimant. If such release has been made, it is clear that excess amount would have been received by the claimant, which he is liable to refund. Conversely, if such release has not been made and there is any deficiency, the insurer will be liable to make it good by requisite deposit with the Tribunal within 30 days. Both sides are given liberty to take appropriate proceedings in this regard.

12. The appeal is disposed of in above terms.
13. The statutory amount shall be refunded to the appellant.

**R.K.GAUBA, J.**

**NOVEMBER 23, 2017**

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