$~44 (R-563)

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 30th November, 2017

\+ MAC. APPEAL No.835/2012 and CM No.43223/2017

NATIONAL INSURANCE COMPANY LTD. ..... Appellant
Through: Mr. Pankaj Seth, Advocate

versus

PRASHANT KUMAR SHARMA & ORS. .....Respondents
Through: Ms. Suman Bagga, Adv.for R-1

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

JUDGMENT (ORAL)

1. The first respondent (claimant) was the petitioner before the tribunal, in accident claim case (MACT No.942/10/07) instituted on 05.10.2007, which was decided by the tribunal, by judgment dated 26.04.2012, returning a finding that he had sustained injuries and consequently suffered permanent disablement, on account of motor vehicular accident that had occurred on 10.11.2006, due to rash driving of Maruti car bearing registration No.DL-1CF-1366, which was admittedly insured against third party risk for the period in question with the appellant (insurer). The tribunal concluded that the claimant had suffered functional disability to the extent of fifty per cent (50%) and, on that basis, granted the award in the total sum of Rs.23,93,500/-, calculating it thus:-

Sl.No.	Heads	Amount (in Rs.)
1.	Medical expenses	23,500/-
2.	Future medical expenses	1,00,000/-
3.	Loss of future income etc.	19,12,500/-
4.	Special diet	10,000/-
5.	Conveyance	10,000/-
6.	Loss of income for six months	75,000/-
7.	Damage of laptop	37,500/-
8.	Pain and sufferings and trauma	50,000/-
9.	Loss of amenities & enjoyment of life	75,000/-
10.	Loss of marriage prospect	1,00,000/-
	TOTAL	29,93,500/-

2. The insurer was directed to pay the above mentioned amount with interest @ nine per cent (9%) p.a, this in addition to Rs.51,000/- towards lawyer's fee and Rs.4,000/- as out of pocket expenses.

3. The insurer by the appeal at hand has questioned the quantum of compensation, directions to pay lawyer's fee and out of pocket expenses.

4. During the pendency of the appeal, the respondent had moved an application (CM APPL.43223/2017) seeking to bring on record change of his name and address. There being no objection to the said application, the prayer is granted. New particulars of the respondent shall be taken on record.

5. The injuries suffered in the accident included loss of four toes and part of left foot. The claimant was earning his livelihood as an agent of the insurance company during the relevant period. The tribunal has assessed the functional disability to the extent of fifty per cent (50%) which, in the opinion of this court, was inappropriate. It is only in case of amputation of the foot that such assessment would be justified. Having regard to Entry No.24 in the Second Part of the First Schedule appended to the Employees Compensation Act, 1923, the functional disability in the case is taken as twenty per cent (20%).

6. It was shown to the satisfaction of the tribunal that the claimant, then aged around 29 years, was earning Rs.1,50,000/- per annum. The tribunal added element of future prospects of increase in income to the extent of 50%, which factor is questioned by the appellant.

7. Having regard to 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 submission must be accepted and the factor of future prospects is restricted to forty per cent (40%) only. Thus, the loss of future income due to disability is re-computed as (1,50,000/- x 140/100 x 20/100 x 17) Rs.7,14,000/-.

8. The plea of the insurance company that one-third should have been deducted towards personal expenses in the calculation cannot be accepted as such consideration does not come in where the claim is for compensation for injuries.

9. As pointed out by the counsel for the claimant, the award of Rs.50,000/- towards pain and suffering and trauma and Rs.75,000/-

towards loss of amenities and enjoyment of life are inadequate. The same are increased to Rs.1,00,000/- each. The awards under the other heads of damages are found to be correct and, therefore, do not call for any interference.

10. In view of the above, the award needs to be reduced by [(19,12,500/-) – (7,14,000/- + 50,000/- + 25,000/-)] Rs.11,23,500/-. Thus, the award is reduced to (23,93,500/- - 11,23,500/-) Rs.12,70,000/- (Rupees Twelve Lacs Seventy Thousand Only). Ordered accordingly.

11. Needless to add, the award shall carry interest as levied by the tribunal.

12. There being no justification for such inclusion, directions in the impugned order about counsel fee and out of pocket expenses are set aside.

13. By order dated 01.08.2012, the insurance company had been directed to deposit fifty per cent (50%) of the awarded amount excluding counsel fee with UCO Bank, Delhi High Court Branch, New Delhi. By order dated 17.04.2013, fifty per cent (50%) of the deposited amount was released to the claimant.

14. It appears that the tribunal had recovered the entire amount by attachment in the course of execution proceedings. In these circumstances, it is directed that if the amount was deposited with it the registry shall recalculate the amount payable to the claimant in terms of the modifications ordered above and release the balance, if any, to the claimant, refunding the excess, if any, to the insurance

company along with statutory deposit. Similar exercise will also be carried out at the end of the tribunal for needful further directions.

15. The appeal along with pending application stands disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 30, 2017
vk