$~R-381 & 410

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

Decided on: 1st November, 2017

\+ MAC APPEAL No. 758/2011

MEER KHAN ..... Appellant
Through: Mr. N.K. Jha, Adv.

versus

MAHENDER KUMAR SINGH & ORS. …. Respondents
Through: Mr. Shoumik Mazumdar, Adv. for insurance company.

\+ MAC APPEAL No. 988/2011

SHRI RAM GENERAL INSURACE CO. LTD ..... Appellant
Through: Mr. Shoumik Mazumdar, Adv.

versus

MEER KHAN & ORS. …. Respondents
Through: Mr. N.K. Jha, Adv. for claimant.

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

JUDGMENT (ORAL)

1. On 30.08.2009, Meer Khan appellant in MAC appeal no. 758/2011 (the claimant) suffered injuries in a motor vehicular accident that occurred due to negligent driving of trolla bearing registration no. HR 38L 7176 (the offending vehicle) by Mahender Kumar Singh (a

respondent in these appeals). As a result of the injuries suffered, the right arm of the claimant had to be amputated in the course of treatment that followed rendering him permanently disabled. His disability having been certified by a board of doctors of Pt. Madan Mohan Malaviya Hospital to be 69% in relation to the right upper limb (Ex. PW-1/1). On his accident claim case (suit no. 656/09), instituted on 06.10.2009, the tribunal held inquiry and, by judgment dated 19.05.2011, found that the accident had occurred due to negligent driving of the said driver, thereby holding the driver and Kishan, the registered owner of the vehicle (another respondent in these appeals) to be jointly and severally liable to pay compensation.

2. The claimant had also impleaded Shriram General Insurance company Ltd., appellant in MAC Appeal No. 988/2011(insurer) as party respondent to the claim proceedings. The tribunal held the insurer liable to indemnify the owner and to pay the awarded compensation in the sum of Rs.6,65,754/- with interest @ 7.5% per annum from the date of filing of the petition, calculating the said amount thus:-

S.No.	Heads	Compensation
1.	Medical expenses	Rs. 7,092/-
2.	Special diet and travelling expense	Rs. 50,000/-
3.	Loss of earning during treatment	Rs. 20,000/-
4.	Loss of future earning	Rs. 3,98,662/-
5.	Other non-pecuniary damages	Rs. 1,90,000/-`
	Total	Rs. 6,65,754/-

3. It may be mentioned here that the amount of Rs. 1,90,000/- which has been included in the award was clarified by observations in para 22 of the impugned judgment to include Rs. 50,000/- towards pain & sufferings, Rs. 1,00,000/- on account of disfigurement and Rs. 40,000/- towards future medical expenses.

4. The claimant, by his appeal, submits that while calculating the loss of future earning due to disability on the functional disability, assessed at 69%, the tribunal should have added the element of future prospects of increase in income. It is also the contention that since the avocation of the claimant was that of a driver, the functional disability should have been taken as 100%. The claimant further seeks enhanced rate of interest @ 9% per annum.

5. *Per contra*, the insurer argues that the functional disability could not have been taken same as the disability in relation to the right upper limb on which opinion has been given by the medical authority. The insurer also argues that there was no formal proof of the avocation and, therefore, the award on the basis of wages payable to a skilled worker ought not be upheld.

6. The evidence of the claimant appearing on his own behalf about he earning his livelihood as a driver has remained unchallenged. In these circumstances, the tribunal correctly assessed the functional disability taking the said nature of avocation of the victim. In the view of this court, the functional disability assessed by the tribunal is appropriate, this in view of the dispensation in Employees' Compensation Act, 1923.

7. There is, however need for correction in the calculation of loss of future earnings since the element of future prospects was omitted. Following the ruling of the 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*, future prospects to the extent of 10% will have to be added, this keeping in view the facts that the claimant was a self-employed person, his income having been assessed notionally, his age on the relevant date being 54 years.

8. The loss of future earnings due to disability is re-calculated as (4377 x 110/100 x 12 x 11 x 69/100) Rs.4,38,522.88 rounded to Rs. 4,38,523/-. Since the tribunal had awarded Rs. 3,98,662/- under this head, the total award needs to be increased by (4,38,523-3,98,662) Rs. 39,861/-.

9. The award is increased to (6,65,754 + 39,861) Rs. 7,05,615/-, rounded to Rs. 7,06,000/-(Rupees Seven lakhs Six Thousand only). Following the consistent view taken by this Court, the rate of interest is increased to 9% (nine percent) per annum from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.]

10. By order dated 01.12.2011 in MAC Appeal No. 988/2011, the insurance company had been directed to deposit the entire awarded amount with upto date interest, such amount permitted to be released to the claimant in the form of interest bearing fixed deposit receipts in terms of the order of the tribunal. The insurer shall now satisfy the

enhanced award by requisite deposit with the tribunal within thirty days, making it available to be released to the claimant.

11. Both appeals are disposed of in above terms.

12. The statutory amount deposited by the insurance company in its appeal shall be refunded.

R.K.GAUBA, J.

NOVEMBER 01, 2017
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