$~R-569

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 27th November, 2017

\+ MAC.APP. 882/2012 and CM APPL.13995/2012 (stay)

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD. ..... Appellant

Through: Nemo.

Versus

TARUN JAIN & ORS. ..... Respondents

Through: Nemo.

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

JUDGMENT (ORAL)

1. The first respondent (claimant), then aged 19 years, suffered injuries in a motor vehicular accident that occurred on 21.06.2010 due to negligent driving of Innova car bearing registration no.KA-03-ME-8316, which was admittedly insured against third party risk for the period in question with appellant (insurer). On his accident claim case (MACT No.35/2011) instituted on 28.01.2011, the tribunal held inquiry and, by judgment dated 14.05.2012, awarded total compensation in the sum of Rs.4,33,871/-, calculating it thus:-

Sl. No.	**Heads**	**Amount (in Rs.)**
1.	Medical bills	1,83,037/-

2.	Future medical expenses	50,000/-
3.	Special diet	25,000/-
4.	Conveyance charges	10,000/-
5.	Loss of income	15,834/-
6.	Pain, suffering, inconvenience, frustration and loss of temporary amenities, etc.	1,50,000/-
	Total	4,33,871/-

2. The liability to pay the above mentioned awarded amount was fastened on the insurer (appellant) with interest @ 9% per annum, this along with counsel fee and out of pocket expenses in the sum of Rs.31,000/- and Rs.4,000/- respectively being payable to the counsel for the claimant.

3. The appeal assailing the aforesaid judgment was filed by the insurer submitting that the award is excessive. It was put in the list of 'Regulars' as per order dated 19.02.2016. When it is called out for hearing, there is no appearance on behalf of either party. The record has been perused.

4. It is noted that in the pleadings the claimant had stated that he had suffered multiple grievous injuries all over the body, the after effects whereof include loss of memory and possible disability in the right lower limb. He relied, *inter alia,* on the record of the corresponding criminal case which includes copy of the medical legal certificate which was prepared in Bhagwan Mahavir Hospital, Pitam Pura confirming that the injuries included grievous ones including that in the right lower limb, the forehead of the claimant having suffered

blunt impact. The diagnostic process revealed diffuse axonal injury with multiple small hemorrhages (page 975 of the tribunal's record). Though the evidence adduced shows prolonged medical treatment, there is nothing on record indicating any permanent impairment suffered.

5. In the facts and circumstances of the case, the damages awarded by the tribunal are not found to be excessive. There, however, being no justification for such inclusion, the directions for payment of counsel fee and out of pocket expenses are set aside.

6. With the above modification in the impugned judgment, the appeal stands disposed of.

7. By order dated 17.08.2012, the insurance company had been directed to deposit seventy five per cent (75%) of the awarded amount (excluding counsel fee and out of pocket expenses). By subsequent order dated 17.05.2013, sixty per cent (60%) of the deposited amount was released to the claimant. The registry shall now release the balance lying in the deposit to the claimant with accrued interest.

8. The insurance company will be obliged to satisfy the remainder of the award by requisite deposit with the tribunal within thirty days.

9. In view of the absence of insurance company at the hearing, the statutory deposit is forfeited as costs in favour of Delhi High Court Legal Services Committee.

R.K.GAUBA, J.

NOVEMBER 27, 2017
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