$~R-567

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 27th November, 2017

\+ MAC.APP. 878/2012

THE NEW INDIA ASSURANCE CO. LTD...... Appellant

Through: Mr. J.P.N. Shahi, Advocate with Ms. Komal Dhingra, Advocate

Versus

MOHD. ASLAM ALI & ORS. ..... Respondents

Through: None.

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

JUDGMENT (ORAL)

1. The first respondent, then aged less than 20 years, suffered injuries in a motor vehicular accident that occurred on 08.09.2005, due to negligent driving of bus bearing registration no. DL-1PA-5913, which was admittedly insured against third party risk for the period in question with appellant (insurer). On his accident claim case (Suit No.462/2010/2008) instituted on 22.04.2008, the tribunal held inquiry and, by judgment dated 15.05.2012, held that he had suffered injuries due to negligent driving on the part of bus driver, which finding has attained finality as it was not challenged by any of the contesting parties. The tribunal awarded total compensation in the sum of Rs.8,27,523/- with interest @ 9% per annum directing the insurer to pay the same.

2. The appeal challenges the computation of compensation on the assessment that the appellant had suffered total functional disability to the extent of 100%.

3. The appeal was put in the list of 'Regulars' as per order dated 21.03.2016. When it is called out on its own turn, there is no appearance on behalf of the first respondent (the claimant). The learned counsel for the appellant has been heard and the record perused.

4. The claimant was his own witness (PW-1) before the tribunal. He proved by the medical record that the injuries sustained in the accident included "compound communited supra condyral fracture with degloving injury over right arm lower tibia and right forearm whole volar aspect and pastrally dorsally", subsequent evaluation also indicating "communited fracture supracondylar humerus of right side", resulting in active bleeding and the muscles being exposed. The treatment that was undergone included several surgical procedures, the disability in the right elbow having remained unrepaired. The claimant was evaluated by board of doctors of Pandit Madan Mohan Malviya hospital which issued disability certificate on 12.08.2011 affirming that the claimant is a case of permanent physical impairment to the extent of 26% in relation to the right upper limb (page 331 of the tribunal's record).

5. The claimant had stated before the tribunal that he was earning his livelihood as an employee in the canteen at Jamia Milia School. It is on that basis that the tribunal took him to be a case of total functional disability meriting computation of award for loss of income

in future. In the opinion of this court, the said evaluation is unfounded. Having regard to the nature of injuries suffered, on the evaluation by the medical board, the disability cannot be treated as more than thirty per cent (30%) functional disability

6. At the same time, 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.*, the element of future prospects of increase in income to the extent of forty per cent (40%) would have to be added. Thus, the loss of future income due to disability is recomputed as Rs.(3165.90 x 140/100 x 30/100 x 12 x 18) Rs.2,87,210.45 rounded off to Rs. 2,87,210/-.

7. Since the tribunal had added Rs.6,83,838/- under this head, the award would need to be reduced by (6,83,838/- - 2,87,210/-) Rs.3,96,628/-.

8. In the opinion of this court, however, the awards under the head of pain and suffering and loss of appearance/amenities/enjoyment of life are inadequate. It is noted that the amount of Rs.50,000/- has been added under the composite head of loss of appearance/amenities/enjoyment of life. The said amount is treated as compensation towards loss of disfigurement (appearance). The amount of damages under the head of pain and suffering are increased to Rs.1,00,000/- and another amount of Rs.1,00,000/- is added for loss of amenities of life.

9. Thus, the net reduction in the award would be (3,96,628 - 55,000 - 1,00,000) Rs.2,41,628/-. The total award is thus reduced to

Rs.(8,27,523 - 2,41,628) Rs.5,85,895/- rounded off to Rs.5,86,000/- (Rupees Five Lac Eighty Six Thousand only).

10. The award is modified accordingly. Needless to add, it shall carry interest as levied by the tribunal.

11. By order dated 17.08.2012, the insurance company had been directed to deposit the entire awarded amount minus counsel fee and out of pocket expenses with proportionate interest with UCO bank and out of said deposit, fifty per cent (50%) was directed to be released to the claimant. The registry shall now calculate the balance payable to the claimant under the modified award and release the same, refunding the excess in deposit with corresponding interest to the insurance company along with statutory deposit.

12. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 27, 2017

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