$~R-568

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 27th November, 2017

\+ MAC.APP. 880/2012 and CM APPL.13984/2012 (stay)

UNITED INDIA INSURANCE CO. LTD...... Appellant

Through: Ms. Suman Bagga, Advocate

Versus

RAMESH KUMAR & ORS. ..... Respondents

Through: Mr. O.P.Mannie, Advocate for R-1.

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

JUDGMENT (ORAL)

1. The first respondent (claimant), then aged 46 years, employed in Delhi Police as Head Constable, suffered injuries in a motor vehicular accident that occurred on 06.07.2006, due to negligent driving of Maruti car bearing registration no.HR-26L-2188, which was admittedly insured against third party risk for the period in question with appellant (insurer). On his accident claim case (MACT Case No.375/2010) instituted on 15.09.2006, the tribunal held inquiry and, by judgment dated 06.03.2012, awarded total compensation in the sum of Rs.11,99,056/-, calculating it thus:-

Sl. No.	Heads	Amount (in Rs.)
1.	Medical expenses	42,940/-
2.	Loss of income	21,700/-
3.	Loss of future income	7,54,416/-
4.	Special diet expenses	25,000/-
5.	Conveyance charges	25,000/-
6.	Future medical treatment expenses	30,000/-
7.	Pain, suffering, mental shock and trauma	1,50,000/-
8.	Loss of amenities and enjoyment of life	1,50,000/-
	Total	11,99,056/-

2. The tribunal directed the insurer to pay the same with interest @ 7.5% per annum and added liability of counsel fee at Rs.55,000/-, besides Rs.7,000/- as out of pocket expenses, for the counsel.

3. The appeal at hand challenges the computation of compensation. It is pointed out that the tribunal has found on the basis of, *inter alia,* the disability certificate (Ex.PW-9/A) that the appellant has suffered permanent disability in relation to the right lower limb, the functional disability being thirty per cent (30%). It awarded compensation for loss of future income on the multiplier of 13, as per the then age of the claimant, ignoring the fact that there was no immediate loss of employment or earnings. The insurer also questions the non-pecuniary damages and the inclusion of counsel fee and out of pocket expenses in the award.

4. The learned counsel for the claimant fairly conceded that there was no loss of employment or earnings immediately after the accident. The claimant has continued to be in the service of Delhi Police. He was born on 10.08.1960 and thus would retire on 31.08.2020 upon attaining the age of superannuation. In these circumstances, the loss of future income due to disability would need to be re-calculated with the multiplier of 9.

5. Thus, the loss of future income due to disability is re-computed as (16,120/- x 30/100 x 12 x 9) Rs.5,22,288/-. Since the tribunal had calculated the damages under loss of future income as Rs.7,54,416/-, the award needs reduction by (7,54,416 - 5,22,288) Rs.2,32,128/-.

6. In the opinion of this court, the non-pecuniary damages awarded by the tribunal do not call for any interference. The award is thus reduced to (11,99,056 - 2,23,128) Rs.9,66,928/- rounded off to Rs.9,67,000/- (Rupees Nine Lac Sixty Seven Thousand Only).

7. It is, however, noted that the rate of interest is inadequate. Following the consistent view taken by this Court, the rate of interest is increased to 9% (nine per cent) 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*.].

8. There being no justification for such direction of the tribunal for payment of counsel fee and out of pocket expenses, they are set aside.

9. The award is modified accordingly.

10. By order dated 17.08.2012, the insurance company had been directed to deposit forty per cent (40%) of the awarded amount

(excluding counsel fee and out of pocket expenses) with proportionate interest with UCO Bank, Delhi High Court Branch. The registry shall now calculate the amount payable to the claimant under the modified award and release the same. The insurance company will be obliged to deposit the balance of its liability under the modified award by requisite deposit with the tribunal within thirty days.

11. The statutory deposit shall be refunded upon proof being shown of the award having been satisfied.

12. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 27, 2017
vk